RUDIMENTALS;

BEING

A SERIES OF DISCOURSES

ON

The Principles of Government—The Government of England—The East India Company—The Court of Directors—The Board of Control—The System of Government in India; and on Jurisprudence or the Principles of Administrative Justice:

ADDRESSED TO THE NATIVES

OF

INDIA.

BY

GEORGE NORTON, Esq.

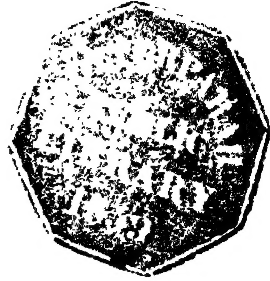
ADVOCATE GENERAL OF MADRAS.

MADRAS:

J. B. PHAROAH.

1841.

ATHENÆUM PRESS—J. HALL, PRINTER.



TO

THE PEOPLE OF INDIA

THIS WORK

IS DEDICATED AND PRESENTED

BY

GEORGE NORTON.

No. 405 J.

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DISCOURSE VI.—*On Jurisprudence: or the principles of Administrative Justice.*

ADVERTISEMENT.

IT has appeared requisite to offer to the English reader some explanation of the nature and object of the present work.

The substance of the ensuing Discourses formed part of a series of Lectures delivered in years 1833 and 1834, in the College Hall of Madras, to an audience chiefly composed of Natives in a respectable class of life.

These Lectures were delivered from Notes; and, with the exception of the Preliminary address, were couched in the most familiar style, both in language and manner. Every effort was resorted to for the purpose of keeping alive the attention of a Native audience, and facilitating their comprehension—as, by local and personal illustration, and even occasionally by colloquial discussion.

In reducing the multifarious materials of these Lectures into a connected work, of course such a character of composition could not be adopted. Nevertheless, to warrant any reasonable hope of attracting the perusal, or fixing the attention, of a Native reader, a peculiar style and a peculiar treatment of the subjects had to be attempted. The Author who would write well or agreeably to an English reader, upon the topics treated of in this work, must write as addressing those who already know much, and have thought much. He who seeks to impart information of this nature efficiently, even to the most enlightened portion of the Native Public who understand English, must address himself

to those who know little, and have thought less upon these subjects. He has to recollect that, not only are many of the expressions he is constrained to use new to the Native reader, as well as peculiarly comprehensive and abstract—but that his ideas, and his sentiments, and his narrative statements are also new to him. They are often alien altogether to such a reader's preconceptions, and even to his personal feelings. It is seldom that allusion is permissible—explanation is necessary at every step. Literary graces must be freely sacrificed—literary faults must sometimes be leaned to.

These considerations have constantly operated on the Author's mind; and, indeed, have occasioned his main difficulties in composition. His chief study has been to write suitably to Native comprehension—he has at the same time felt a desire to elevate their thoughts and feelings. He has likewise kept in view the contingency of some attempt at an exposition of the subject matter of these treatises through the medium of the Native languages. Actuated by these impressions he has from time to time communicated portions of his manuscript to intelligent Natives, and has been in some degree guided and encouraged by their approbation.

The Author has thought it due to himself to offer these explanations to the English reader upon the style and quality of the ensuing treatises. He is prepared to be criticised by such without favour, but he is unwilling to be judged without fairness.

It may be surmised, perhaps, in reference to the above observations, that this publication is at least premature—that it neither deserves, nor is calculated, to be popular; and therefore it is not likely to be useful. This is so novel an undertaking that the Author indulges no speculation as

to its popularity with any classes of the Native public. But he is nevertheless buoyed up by the hope of its becoming useful, even though it may never become popular. Since the time when the Lectures above alluded to were delivered, a very extraordinary change has become notorious in the sentiments of Native Society throughout India. An attachment to the British rule has gradually extended, and an admiration of its institutions. A spirit of social intercourse has begun to prevail, and a desire of amalgamation as fellow-subjects of one Empire. But, above all, a conviction of the advantages of English education, and an earnest desire to promote it, and thereby to gain the only true qualifications for office and station, in the state and in society, has spread widely among the superior classes of the Native population. This change of feeling can no longer be disputed nor despised. Seventy thousand Natives of respectability entreating by one single petition the patronage of Government to the cause of education is a sufficient proof at least that such a spirit is awakened. If, indeed, the diffusion of knowledge and the increase of scholastic institutions has hardly kept pace with the wants and wishes of the people, yet the care of the Indian Governments and the benevolence of societies and of individuls have provided a whole rising generation of Native students in English literature. A Native public so directing their attention to these noble and national objects ; and a rising generation so versed in the more useful departments of English learning, can hardly devote their inquiries to topics of more true interest to themselves and to their country, than such as are treated of in the ensuing pages.

If there existed any English works which compendiously and suitably expounded the principles of Government and of law, and the fundamental constitution of the English and Indian Governments, to which enlightened Natives might

resort with an assurance of easy and adequate information, the following work would perhaps neither merit nor receive any notice. But, if it would be vain to point to English literature for such purposes, the attempt in some degree to supply such a deficiency is not a misguided one. It may serve to direct Native thought into new and productive channels—it may serve thereby to strengthen the union of the Native people under the British rule. It may at least prepare the way for the more successful labours of those who may bring that interrupted leisure, and apply that continuous thought, to their task, which, however necessary, the avocations of the author of these Essays would not permit.

It may be objected to the following Discourses that, as they contain little that has not been better written before by accredited authors, it would have been fair, and useful to the studious inquirer, to have quoted copiously and distinctly the authority from which most of the positions appear to be taken. But the truth is that not much has been borrowed from preceding authors. What is not new has been at least newly treated of; and very little consultation has been given to the great writers on politics, moral philosophy, and jurisprudence, until after the task of composition was closed. The work has, indeed, been corrected, and sometimes adorned, on subsequent references to such authorities—and the learned reader (if any should be at the pains to take up this Volume) will be reminded, occasionally as he proceeds, of Bacon, of Locke, of Montesquieu, of Hume, of Mill, of Aristotle, and of others. But he will see, at the same time, that there is not room for frequent reference to such authorities, in consequence of the manner in which their common subjects have been worked up in these treatises. Some positions, it is believed, are altogether new—as, for instance, what have been advanced as the true distinguishing principles of the Civil and Criminal Codes. The most frequent resemblance may perhaps be found between

some portions of this work and some portions of Bodin's* *Republic*, and of Paley's Moral and Political Philosophy—and yet not a line of either of those treatises was ever read by the Author till after these Discourses had been written, nor has a line been since altered in consequence of such perusal. He was, however, forcibly struck with the following observation in the preface of the latter writer; which observation he adopts for himself: "My method of writing has "been, to extract what I could from my own stores and my "own reflections in the first place, to put down that, and "afterwards to consult upon each subject such readings as "fell in my way: which order, I am convinced, is the "only one whereby any person can keep his own thoughts "from sliding into other men's trains." Of course these remarks apply only to the *didactic* portion of the work.

It has been in the Author's contemplation to proceed somewhat further with these dissertations; and to add discourses on the nature and quality of the laws of England, as administered in the Supreme Courts of India, and on the law of India, as administered in the Provinces. These might be followed up by expositions of the course of judicial procedure in the Supreme Courts (and particularly as regards the administration of criminal laws,) and of the course of judicial procedure in the Provincial Courts. It will be allowed, perhaps, that such disquisitions, if adequately treated, would not be without interest or without use. It remains, however, to learn whether the reception of this volume should encourage a repetition of the present expe-

* It has been remarked by a great critic and Philosopher (Dugald Stewart) that the observations of no political writer "have been more frequently transcribed without "acknowledgment," than those of Bodin. And, certainly, the palpable resemblance of many of his positions, and much of his reasoning to those in the 1st and 6th of the following Discourses would lead a learned reader to class their Author (but for his positive assertion to the contrary) as open to the same imputation. Bodin, however, abounds in errors, and even absurdities; and, had a transcriber used his pages, he would hardly have avoided noticing, or refuting them. The Author has not done so for the obvious reason that, at the time of writing, he was not aware of them.

riment. In the mean time it has been announced, that Lord Auckland's government has suggested to the Boards who have the superintendence of national education in India, the expediency of measures for engaging qualified individuals in the composition of various Elementary Treatises, as manuals of public instruction—among which are very judiciously included treatises on local law. It may be reasonably hoped that individuals will be found ready to engage in such an honourable duty, who are not only far *more conversant in the local law of India than the Author* of this work pretends to be—but who are more likely, from their acquaintance with Oriental languages, and an intimate knowledge of the mental character and disposition of the Natives, to fall into a happier vein of composition. At all events they will possess that requisite leisure for the task, which this Author cannot command.

The Author has but one further observation to make—which is upon his having affected to *present*, as well as to dedicate, his work to the people of India. It is not that he assumes to put any value upon it--it may be altogether worthless, and continue to be thought so. On the other hand, it is possible that it may attain a higher degree of attention than at present he can expect. In that case he wishes it to be known that he claims no copyright. He has so little of an Author's regard for his work, that he cares not who may think fit to print it, or to extract from it, or to use up any portion of it. He has been desirous of affording a fair profit to the publisher of the first Edition—fixing the price as low as is compatible with such profit—and he has also fixed some price with a view to save himself from any serious pecuniary loss. But, if either of those purposes are answered, he places no other restriction on any benefit the Public is able to derive from this work.

MADRAS, *May 30th*, 1841.

* PRELIMINARY ADDRESS.

Right Honorable Sir,† Gentlemen, and my Friends,

I am about to undertake a task, which I cannot hope justly to fulfil; but it is an effort in which any success whatever must diffuse wide and lasting benefits. I aim at opening to the minds and reflection of the Native Community a knowledge of the principles of government and of justice —an acquaintance with the plan of government under which they live—a knowledge of the nature of its laws, and of the appointed course for the administration of justice under them.

I have meditated much on the difficulties of this undertaking; and, now, on the entrance of my path, I pause in hesitation and doubt. The only encouragement on which I rely, and which animates me at this moment, is that zeal, and that anxiety, which the spectacle before me of so numerous a body of Natives of the first class proves. Other feelings subside in gratification while addressing myself to those who evince such an unequivocal desire of availing themselves to the utmost of the means of improvement my labours can offer.

* The substance of this address (a note of which was published at the time) was delivered in the College Hall of Madras as the commencement of a series of Lectures on the present and other subjects. It is here republished as an introduction to the subsequent discourses.

† The Governor, Sir Frederick Adam, was present.

I have reason to know that you have become aware of the honorable policy which for some years past has characterized the measures of the governments, both of England and India towards the Natives. The prospects and privileges now opened to you, of attaining to important offices in the civil government of your country, and in the administration of its laws, are at the same time dependent on your qualifications to sustain them. You have been forward in shewing yourselves worthy of the opportunities thus afforded of advancing your political and social position. Much of this was expected of you by your fellow-subjects. They have not been deceived. Be assured that your endeavours will be cordially fostered by the government in England; and that the same disposition is felt in India requires no better proof than the presence of the Governor and of so many of the heads of society on the present occasion.

Of one voluntary effort on the part of the Hindoo community for the advancement of sound knowledge amongst themselves it behoves me here to speak. I allude to the institution of a Hindoo Literary Society, among the first fruits of which is the undertaking in which I am now engaged. I am gratified to find that this Society has deemed the principles of government and of law, the plan of power, the quality of the laws under which they live, and the administration of those laws, to be among the most valuable departments of useful knowledge. Under this impression some of its most respected members have from time to time consulted me on the best method of prosecuting their own studies or of directing the application of others; and it is scarce necessary to inform those versed in learning of this nature, and who are acquainted with the present progress of your community in English literature, that no satisfactory advice could be afforded. I might point in vain to the learned works of European scholars in politics and in laws; I might look in vain amongst these works for the most elementary opening of such branches

of knowledge, such as might at once be adapted to the peculiar circumstances which characterize the present condition of the people of this Empire, and to their present state of mental cultivation.

All that I could accomplish in furtherance of these honorable desires—all that lies in my power in advancing that great interest in the native public at large to become worthy of the prospects placed before them—I am now about to attempt. I have thought it possible to effect something for the public benefit, in bringing before your view, through an easy and popular style of delivery, such as I now aim at, some outline of the principles of Government, of Justice, and of Law—some intelligible explanations of what plan of government, and what course in the administration of the law, prevails throughout this your native land. To these my best services I bid you welcome. I hope to excite at least an impulse in your minds to consider the vast national importance of your progress in this department of knowledge, on which all your dearest interests are wound up. Hereafter (and the sooner that time arrives the better) you, or those who come after you, will better attain such information through Books and Treatises adapted to your progress in literature and experience in life.

Let me endeavour to engage your attention by enlarging somewhat further on topics calculated to infuse a desire and confidence on your parts in the pursuit to which I invite you, and at the same time to cheer my own spirit at this commencement of my labours. If we rest our momentary notice on the early and feeble beginnings of a great work, how insignificant do they appear—but that our contemplations are soon absorbed in the worth and magnificence of the work designed. How trivial a thing in itself is the first plunge of the ploughshare in the wild soil of a wasted country—how animating and sublime the vision of expanded fertility to which it directs our thoughts. Let us not be

disinheartened at the quality of these our first attempts, nor by the apprehension of the little we may accomplish. I call to mind what were the fears and sensations of one,* who, in opening to the view of my own countrymen in England a systematic display of the nature of the English law and government, proved in the result one of the greatest benefactors of his age. I call to mind what were his feelings when, without patronage, or office, or duty, he first on a mere voluntary engagement, and before a few private students, undertook that task which afterwards became the source of a vast national boon, and of his own perpetual fame.

Pretensions such as these I do not advance—but I cannot fail to draw encouragement from the similarity of our undertakings. This eminent man, meditating upon the duty cast on every enlightened citizen to become acquainted in some degree with the laws of his country, and mindful how necessary was the profound study of those laws to all who sought professional or political distinction, points out in forcible language how discouraging, even to the English student, was the entrance to the study of the law—without public direction in what course to pursue his enquiries—no private assistance to remove the distresses and difficulties which will always embarrass a beginner; so that the student might be left to a tedious lonely process of extracting from a mass of undigested learning: and, he adds, it was little to be wondered at, under disadvantages like these, that men of moderate capacity confused themselves at first setting out, and continued dark and puzzled during the remainder of their lives.

If with these considerations on his mind this learned and patriotic man resolved to devote his talents and acquirements

* Sir William Blackstone, the author of the Commentaries on the Laws of England.

to that great object in which his success was so conspicuous —how much more forcibly do the present difficulties which overwhelm the efforts of the native community of India to attain to this valuable knowledge appeal for assistance. Towards such an object, indeed, I might venture to trust that my present services are not ill-directed. But how am I to disguise, and how can I explain a way, those difficulties which, not only the very nature of my task, but the peculiar quality of my audience must necessarily oppose to my success. The subjects on which I am about to discourse are in themselves profound and, to any but an attentive and an intelligent mind, repulsive. When Blackstone addressed himself to well educated English youths, burning with a desire to enter on those studies on which their fame or fortune were to depend, he could not refrain from expressing his fears lest an inadequate manner might beget a distaste to the learning he aimed at imparting, or lest a defective execution should leave a blight upon its fruits. Gifted with an eloquence that could charm attention—abounding in all the requisite knowledge—and addressing an assembly of scholars, as greedy to receive instruction, as competent and willing to applaud his labour—he, nevertheless, hesitated at the thought of a failure which might hinder, rather than advance, the object of his rational hopes.

But if any such considerations could justify diffidence in him—I cannot deny that they operate with far greater weight on my own reflection. Neither can I shut out from my own view—nor will I attempt to do so from yours—other more discouraging obstacles to my success. I cannot but be conscious how incapable I may be deemed of so expressing myself in a language not your own, as at once to carry with me your comprehension, and to give due effect to my meaning. The novelty of such studies as these—your indistinct and unconsidered notions of government, and of law—your peculiar tenets of religion and of caste—your peculiar domestic habits—and your very modes of thinking

and of expression, so widely differing from those of my own countrymen—these are all sources of perplexity, which, if they do not overwhelm me with despondence, palpably warn me of what I have to struggle against.

Such are without disguise the obstacles in our path—let us turn our more cheerful regard to those means by which through our united exertions we may surmount them—never losing sight of the noble result we aspire to, in the advancement of the best and national interests of your community.

I would first exhort you not to distrust your own mental powers, or the effects of persevering labour at improvement. Had I attempted ten years ago to address myself to the native community at Bombay as I now address this audience, I doubt if three natives could be found there to whom I should have made myself intelligible. Were I now to invite such an attendance in that city, I am fully persuaded that more than one hundred enlightened and anxious students would flock to such a call. To what powerful cause was this to be attributed? To the patriotic wisdom and to the energy of one man—who made it the care of his government that the plain—the infinite—advantages of sound knowledge should be unfolded to the view of the heads of native society in that presidency. To Mr. Elphinstone, and the zealous and able agents of his policy in forwarding the same cause in which I am engaged, are your neighbours indebted for that extraordinary advancement, both political and social, which cannot fail to have attracted your admiration and interest. But, were I to compare the condition of the native community of that presidency, as I first knew it, in point of acquaintance with the English language, and progress in literary acquirements, with the position of yourselves at this moment, I can feel no hesitation in declaring the superiority to be with you. But the necessary effects, and the value of mental cultivation (and I know of no more important

objects of it than those I propose to discuss) have been fully appreciated by your Bombay fellow-subjects. The better orders have seconded by their own zealous exertions the efforts of their English friends—and their reward has been almost as immediate as it has proved lasting.

The infinite advantages, indeed, of a liberal education it is quite needless I should expatiate upon, and it may be thought by some that your need of them, and your partial acquaintance even with the language in which I address you, must preclude altogether any effectual progress in the higher departments of knowledge through such a medium of instruction as I resort to. Some little experience in intercourse with such members of our community as I see before me has inspired me with better hopes. I do indeed believe that any elaborated treatise, thus delivered verbally, must necessarily fail of practical success —and, although such a work might, or at least may hereafter, prove an useful assistance to those who nobly dedicate themselves to such studies (provided it should be adapted to your present circumstances and condition) yet it could only become so by being used as a source of private labour and meditation. These considerations have prompted the mode of addressing you which I propose to pursue. By delivering myself, to the best of my endeavours, in the familiar language rather of conversation than of lecture, I may perhaps not only become the easier understood, but I may better draw out your attention and interest towards the subjects I discuss. I can take opportunities of repeating and enforcing in various ways topics not at first clear to your perception—and I may attract (as I now invite) your own personal inquiries and discussion as we proceed. Let us not despair, therefore, of effectual progress together in these new and unexplored paths. Come you with a sincere desire to understand what you ought not to feel satisfied in not understanding—be you but willing to learn, and resolute in paying attention—and I think I may safely promise that you will not go thanklessly away.

Connected with these hopes it is but fair and just that I should remind you of the many examples of wise and talented men who have from time to time adorned the annals of your native history—and left their memory for your encouragement to dismiss all idle apprehensions of knowledge of this nature being too high for you. From old times down to the present moment, many have arisen among you who truly deserved the titles of moralists, of statesmen, of lawgivers. It is impossible but that most of you have often heard the name of Menu—and there are many other ancient writers whose maxims and doctrines I might quote with respect. The progress of the Mahometans of many countries in literature is well known and appreciated; and I do but repeat, what in justice has often been acknowledged, that the European nations owe much of their advancement to the learning of Mahometans in the deeper and more useful branches of knowledge and science. The Madras System of Education has been the source, also, of a valuable boon to the whole European world, as exemplifying the plan of *mutual instruction* now so common in the schools of England, which has produced astonishing effects in disseminating the elements of knowledge throughout the youthful classes of the people.

True, indeed, it is, that this learning, these maxims, and these doctrines of Eastern Sages, are characterized with many errors and defects—(so my own reason compels me to avow)—and no system of political government or of jurisprudence has ever yet been taught or prevailed in these countries but such as falls far short of the intellectual standard of those systems generally prevailing in Europe. But it serves sufficiently the objects of our present meeting to know, that strength of mind, much knowledge of human nature, much sagacity and quickness of apprehension are abundantly testified—and perhaps it required but that the minds of these eminent men should have been regulated and directed by the same bias as that which swayed the studies of the great men of Europe, to have enabled them to exhibit similar results.

Are you then the true descendants of such honored countrymen—or are we to suppose that your faculties are no longer the same? Happily our own personal experience has proved to us the contrary. You have all heard of Ram Mohun Roy—you know that he has earned the credit of an excellent English scholar and writer. I can further assure you that his advice and opinions have been consulted—not without real advantage—by the ablest statesmen in England on subjects connected with the good government of this country, and the mode of administering justice within it. Here is a plain proof that there is no deficiency of capacity, or of talent, for pursuits such as those to which I invite your attention, among the natives of this country. I am enabled also to state, from the communication of one who knew him well (Sir John Malcolm) the name and genius of another eminent individual gifted with abilities which, if they did not form the plan of government of an Empire, were qualified for even so exalted a task. I speak of Poorneah, who was the Dewan of Mysore, at the period of the deposition of Tippo Saib and his family. Many days of discussion—many of anxious thought—were devoted by two of the greatest statesmen of this age, the Great Duke of Wellington (then Sir Arthur Wellesley) and Sir Barry Close, in settling the future plan of government to be administered—but Sir John Malcolm, who was present at those discussions, informed me that, after all, the able suggestions of Poorneah were those finally confided in.

In naming before you Sir John Malcolm, who was personally known to several of you now present, I call on you, my native friends, to revere the memory of that man: for he was one who truly loved, and laboured for, and served this country. He had his faults—which some called vanities—but they were faults which testified a clear and noble spirit—for they were of a kind which proved the first ambition of his heart was to be useful to mankind.

But, before I quit this topic, I must commemorate one more native individual, lately living among us, whose sound judgment, and many acquirements raised him to a very conspicuous eminence as well in the estimation of us Englishmen, as in that of the native community of this place. I allude to one whom I need not name, who was the author of the English document I hold in my hand; which, in the force and accuracy of its language, as well as in the expanded views it unfolds, evinces at once a capacity and a cultivation of intellect which I can hardly desire should be surpassed by any who honor me at this moment with their attention. In reading this his solemn dying advice to his sons, I warm in admiration of a mind soaring above all local prejudices, and pregnant with the wisdom of a reflecting experience. How just, how clear, how convincing, and how weighty is every sentence in which he inculcates those lessons of independence, of self-government, and self-exertion, which he shews ought to supersede all slavish bonds of ignorant customs! In leaving this his best legacy to his children, he may be said to have left a legacy to human kind.*

* The document was the Will of Chinnatomby Moodelly, which verbatim in his own English ended as follows:—"With a view to the real welfare "of my said Sons, and considering that a life of activity and perseverance is the only certain path to independence and respectability, I "earnestly recommend that they shall respectively on attaining the age "of 21 years establish themselves in separate houses, each living on his "own separate means, and by his own separate acquisitions, in the sole "enjoyment of the fruits of his own industry, as this mode of life will "be the best adapted to avoid internal domestic disputes and quarrels, "which too frequently occur where too many persons compose a family, "and are interested in a joint common stock; in which latter case the "idle, the illiterate, and ill-principled live in indolence and waste at the "expence of the diligent, ingenious, and industrious members of the "same family. My reason for giving this recommendation proceeds "from my own observation through life, and from conviction that a "state of dependence equals that of slavery; as he that has a confidence "in the support of another, seldom has ambition to support himself "for his own advancement, and consequently neglects the improvement

And when I thus presume to scan and measure the scope of your intellectual powers, and profess to test the quality of your means of comprehension—when I contrast what may be your present position in these respects, with that advancement to which your neighbours of the other presidencies have arrived, and to which this my humble effort is aimed at contributing—can I be unmindful of what history has proclaimed of the *English Nation*—from what a debasement to what an eminence it has emerged, through the influence of equal laws and a well constituted form of government? You see before you the scanty portion of a distant people—and that portion subdivided in petty societies, and scattered individually throughout a country ten times larger than their native land, and amidst a population outnumbering them more than ten thousand fold. You learn that by the force of their arms, or by the wisdom of their political measures, vast kingdoms have been brought under their sway—you see that a mighty and extended empire is governed throughout all its branches, in peace and prosperity, under the guardianship as it were of one master spirit. You observe that by their arts of commerce new kinds of wealth are spread over the country—new lines of industry are opened—new sources of national interest are flowing. The question arises in your minds instinctively—how were these wonders atchieved?—and a moment's reflection supplies the instant answer. By their wise and well established government—by their just and well administered laws—this people have thus arisen: By their energy, of soul and character, by their advancement beyond their fellow-men in science, in the arts of life, and in knowledge of every quality, have they commanded means

" of his mind, having little or no occasion for the exercise of genius or
" penetration, owing to his being a stranger to business and indifferent
" about his own reputation, or the good opinion which respectable and
" praiseworthy characters never fail to establish in the world by a strict
" adherence to instruction and useful pursuits."

which could not be resisted, and founded Empires where they but recently sought reception among strangers. But, should I call you from this contemplation, and picture to your imaginations the *original race* from which this people descended, I should summon you to behold savage hordes of men, roving through woods and wastes, without clothing—at a period when India contained flourishing cities and well cultivated plains, swarming with a people who lived under regular governments, and who were almost as far advanced in civilization and in the agreeable arts of life, as they were one hundred years ago. Judge for yourselves, then, what are the true sources of national advancement; and doubt not that the same mental cultivation may accomplish for the people of India that which it has effected for a nation of barbarians.

It was the lot of the English nation, in these ancient times, to be invaded by a people whose empire was more powerful and extended than even that of England at the present moment. Borne down at once to subjection they gained from their conquerors far more than a compensation in the introduction of such laws and regular government as soon raised them from a savage state into that of civilization. Cities were founded, fertility overspread the plains, the arts of peace began to flourish, and literature began to raise her schools where the beasts of the forest had but lately ranged.

But events which change the destinies of Empires and of mankind drew from the land those conquerors who had become protectors—and the helpless natives, bereft of the superintendence of a regular authority, and a prey to internal divisions, soon relapsed into almost their former condition of privation and misery. A letter which they addressed for succour to their late governors (I speak of the Roman people), who had been compelled to abandon them for the protection of their own immediate homes, was entitled "The "groans of the Britons." "The Barbarians," they say,

" drive us into the sea; the sea throws us back on the " barbarians. We have but the hard choice to perish either " by the waves or the sword." Such was the state of the British people some fourteen hundred years ago—sunk once more into their original ignorance and helplessness, at a period when India was composed of many wealthy and luxurious nations, living from age to age under the influence of settled laws and organized governments.

I could hardly fail of exciting your interest in tracing the progressive history of the English nation from so wretched a political condition; and it would not be altogether foreign from the object of my present address to do so. But I must restrain myself to a passing glance.

With many bloody struggles against a new invasion of foreign foes—after many desolating wars throughout all parts of the country—after two hundred years of confusion and internal disorders during which neither laws nor literature could find a resting place, nor scarce a government existed but in name—the English at last became again an united people under one settled and constituted plan of power. Then first began to be laid, under the superintendence of one of the wisest of monarchs, the foundations of a regulated system of government and of the administration of justice, from which has gradually sprung (after many vicissitudes) that splendid structure of political power and digested laws which has become a model for other nations to imitate. The details, indeed, of this system, such as it existed in early times, were very different from such as characterize that of the present enlightened period; but you will learn with some interest that in many particulars they resembled such as by long custom have prevailed in many parts of India. In England, as in India, Villages had their *Head-men*; and many Villages, forming one District, were under the control of one magisterial chief. There too, as here, it was a custom for Villages to supply

certain of their inhabitants to be pledges for the good behaviour of the rest—districts for inhabitants of districts —and cities for the dwellers within cities. It is at least a curious, if not an instructive, circumstance to mention that it was also customary at this early period of English history, when well considered laws began to be made and promulgated, for certain persons best acquainted with those laws and the course of administering justice to discourse before assemblies of the people, in the way of Lectures, upon those regulations and ordinances, which the public were called upon to obey. Some attempts, moreover, were made to digest into a regular code the whole body of the prevailing laws and customs of the people—and not without success.

But now occurred another invasion by a multitude of foreigners—the ruling power was overthrown—strangers succeeded to paramount authority—and, then, as too generally happens upon such violent political change, a long and miserable period of oppression and wrong ensued. The land became filled with but two classes, the foreign conquerors and their dependents.

At this crisis, however, of their third invasion, the people had already arisen to the rank of an independent nation. They had already felt the pride of self-government, as well as experienced the incalculable advantages of equal laws. They were never destined again to be subdued, or to fall beneath the weight of arbitrary power. It was in vain that a series of wilful or imperious monarchs, or that the band of their attendant chiefs who overspread the realm, essayed by new and burthensome mandates to destroy their spirit, or overthrow their institutions. They still claimed their ancient laws and customs as their rules of right and security—they still exerted themselves to obtain a settled and regular course of government, under which, through constituted forms, the voice of the people at large might be heard, and the general interests be the better pursued. As useful

knowledge became more and more diffused, and as mental cultivation advanced, the people could not fail to be further encouraged in their efforts, in proportion as they observed the evils of uncertain and uncontrolled authority, and contrasted them with the benefits of ascertained rights. They sought, therefore, their ancient institutions, and loved their ancient laws—not because they were *old*, but because experience had taught them they were *beneficial*. For, as intelligence prevails, men become reconciled, however slowly, to the abandonment of the dearest and most inveterate prejudices which reason condemns; while they will at the same time contend against constituted authorities even for new principles of law and government which their deliberate judgment shall have approved. In the end the true cause of the English people triumphed. Their last invaders found their best interests in becoming united in rights and in duties with those whom they had begun by oppressing. By slow gradations, and after several hundred years, a peaceful and settled government was once more established—based on *certain* and *just* laws towards the people, and on well arranged forms as regarded the security and strength of the supreme power of the State.

I date the period as no longer back than about four hundred years, when, the frame and outline of the English plan of government having been thus placed on settled foundations, and the administration of justice now proceeding on ascertained rules and principles, the qualities of both began to form the subjects of general study among the best educated and superior classes of the community. Long previously, indeed, schools of law existed, and many learned persons had during the course of two or three centuries taken up the task of expounding portions of the national jurisprudence—to which circumstance the acknowledged merit to which in aftertimes it attained has been said to be greatly owing. But, at this latter period, the progress of these national laws towards perfection had suggested

the reduction of them into some regular order, such as gave to them the character and dignity of *a science ;* and it began to be evident that on the learning of its professors must depend in no small degree the maintenance of those laws, and with them the security and the prosperity of the whole people.

The course adopted for inculcating a public sense of the value of these important studies, and of instructing the class of aspirants at this most distinguished of all the branches of human knowledge, was mainly by *the delivery of public lectures.* You imagine to yourselves a literary people, reposing in internal peace ; amongst whom the arts of life had already spread plenty and refinement, and ministered leisure for the highest mental occupation. Not so. The students who at this period. to the number of 2000, are said to have flocked around the fountains of legal knowledge, and all of them members of the highest class of the English people, lived in cities for the most part built of wood and clay, and were content with earthern floors in their houses strewed with rushes in the place of carpets. In the self same age we learn that Beejapoor existed in all its grandeur. We read of the Emperor of India stepping forth from his marble palace—and Akbar, reigning over thousands of flourishing cities and a population of one hundred million souls, surveyed the sources of a nation's wealth and prosperity, and found his empire to be the richest on the earth. Pausing in meditation on the varied subsequent fortunes of these two countries, who cannot see in the gradual decay of the one, and in the astonishing advancement of the other, wherein lies the real and permanent strength of a nation ? Who is so cold in feeling as not to gather excitement from such thoughts, as the path to national honor opens to his view ?

These Lectures I have spoken of, delivered to a comparatively rude and unrefined people, making their early efforts

in the attainment of political and legal science, under equal disadvantages with yourselves, were of far inferior extent and merit to those afterwards commenced by the great expounder of English law in modern times—Blackstone. In the progress of three or four centuries, as the national power and greatness increased, so also increased the commerce, the wealth, and the population of England—and in proportion with that increase necessarily accumulated the laws which regulated the enjoyment of rights and of property. As education also became more generally diffused among the people, it might be presumed that the quality of the laws would improve, and the true principles of a just and stable government become better understood. But, now, at a period when the interests of the people most required that their laws and rights should be thoroughly known and guarded, not only had these laws become a mass so vast and incoherent, from want of some system originally in the enactment and promulgation of them, as almost to defy the grasp of the human intellect, but the custom also of expounding them through scholastic lectures had gradually ceased from the same cause. It was then that the master-mind of Blackstone conceived the design of digesting into one consistent whole an exposition of all those general rules of law on which the government of England, the rights of persons, the security of property, and the well-being of society throughout all its gradations, were founded. And he did not undertake a task too mighty for his accomplishment! In four short volumes he has described an outline, which, though faintly marked in some parts, encircles the whole body of the English law.

I have thus traced, though by slight allusions, the progress of the English people, of its government, and of its laws—because true history, which teaches wisdom by examples, reads a more impressive lesson to those who will think, than any which the most eloquent reasoning could supply. That we may turn such a lesson to account, let us take a survey

of that political prospect, which now, if you, the people, will begin your career in rivalling the prosperity and power of other nations, lies before you. Let us contemplate what are those hopes, and objects, and advantages, which all persuade an acquaintance with your government and its laws.

The people of India now for the first time in the known history of the world live under a *stable* government, the power of which is too widely extended, and too firmly consolidated, to be easily shaken, either by external foes or internal disorders. And this consideration carries with it, indeed, the promise of those chief national blessings, security and peace : but, how far your union in interests with the greatest of nations may assure you of more extensive privileges than what depend on the mere strength of government —in short, of those valuable rights and means which distinguish your fellow-subjects, and have rendered them what you find them to be—must depend on the policy of the governing powers under which your lot is cast. Of that honorable policy I have already spoken, and I should not find it difficult to corroborate by instances its liberal quality. You have become witnesses of its disposition to advance the common prosperity through *equal* and *fixed* laws—its measures for facilitating your access to office and authority must have been felt by those who have inquired. If you shall look around you, to mark what is doing at the other presidencies, you will find that the promulgation of those arts and sciences which most contribute to the happiness of mankind has become the public care. Nor need I to point out to your notice the increasing spread of commercial enterprise, which must ever be the most copious source of wealth and civilization, or its attending benefits in advancing a more social intercourse among all classes. All these considerations, be assured, afford proofs of that liberal policy which aims at uniting the whole community through the same interests. Neither can wealth abound, nor the arts flourish, nor distinctions in so-

ciety be coveted, where the government is oppressive, or the laws unequal : for justice in government is the staff of peace and of honor.

If these are the national prospects before the people of India, it surely behoves you to reflect on their value, and lend your endeavours in warding off all disastrous change. The evils of foreign conquest, or of the overthrow of a settled government, those who have experienced can never find language to express. But, unless you have some *knowledge* of the nature and plan of your government, and of your general and common duties under it, you cannot have a sense of its benefit. While you shall obey without reason—while you shall be incapable of forming an attachment or an interest towards those laws under which you live, from ignorance of their quality, what aversion can there arise in your mind to change, or union and firmness in resisting it? That national virtue which is a peculiar characteristic of a great people, and which the English call *loyalty*, is not more an attachment to any monarch, or particular family of monarchs, than a love for the *plan of power*, and *system of law*, upon which the prosperity and glory of the country depends. Upon this principle of *loyalty* men are always found ready to sacrifice all they have, and their very lives also. for the preservation of their country's independence. But of this noble virtue you can have no just notion while unable to value or understand that which is its only source. Having no other care or object but to obey—incapable of judging the difference between any two modes of government—content to live as servants—you would cast aside all hopes of further advancement, and be ever the prey to oppressors whom your indifference to change had most served to invite.

Thus may you be led to perceive that it is a *duty* which all good citizens, who aspire to share the full benefits of a liberal government, owe to the state, to become more or less, according to their means and circumstances, acquainted with

the nature of the laws under which they live. So much so, that in that state, which once was the mistress of the civilized world, the very boys were obliged to learn its fundamental laws. But it is not merely a *duty*—it is a most important personal *concern* to every one of you who listen to me, and who look to be entrusted with a share in the offices of authority. How can you expect to exercise the functions of such offices in acknowledged ignorance of the duties they impose? What but contempt can pursue the mischievous efforts of such unqualified persons? Can it be expected, for instance, that those can be qualified to act as magistrates who know none of the rules which the law lays down for the detection of crime and the awarding of punishment? But, whether as magistrates, or as grand jurymen, or as jurymen, you should ever understand that you will be required to exercise your functions *as by law provided*, and not according to mere natural sense or the human will—for nothing is less to be trusted to, as between the magistrates and the people, than the human passions, or the varying suggestions of half-informed natural sense.

I hope the time may not be far distant when, not only in the Provincial Courts, but also in the highest, such duties as myself and others exercise therein will be shared by individuals chosen from among the native community. But those who aspire to the higher stations in the department of the laws must acquire that sufficient knowledge of its rules as to enable them to advise on the rights and remedies which certain and fixed laws declare. Much shall I rejoice if, even in my time, some of the rising generation shall be incited under the guidance of these principles to undertake a profession of so honorable a character: for I am of opinion that the laws of this land will never be administered with their fullest and most beneficial effects, until practitioners shall be selected from the natives them-

selves—beginning with those who shall first surmount the difficulties which at present beset their way.

It is not, however, to such alone that I now address myself. I hope to awaken an interest, and to stir that spirit within you, which, after generating a conviction in your own minds that some knowledge of your government and of the laws is every enlightened man's concern, shall diffuse its influence over your community at large, and produce its fruit in aftertimes.

To you, then, whose honorable zeal in so noble a cause has brought you from the ease and habits of your homes in search of knowledge, however hard to find—to you, who set your fellow-countrymen an example never, I trust to be forgotten among them, and advance from the foremost ranks of your society to render yourselves but as pupils and children before a teacher—to you I earnestly appeal to pursue the path you have thus begun to tread. Among you the light of knowledge must first spread—as the dawn must first gild the summits before it pierces to the levels and depths. Be mindful of those great benefits you thus prepare to hand down to your children's children. Let the difficulties and embarrassments, which may now attend your efforts in mature life to acquire the elements of that knowledge which most interests you as a people, teach you to weigh well the better means held out to your children *through education.*

Turn your reflection on the prospects of prosperity held out to your country through the diffusion of that valuable knowledge in political government—in rights—and in the laws, on which alone national welfare can be based. Cherish these feelings, as they may arise in your own breasts ; encourage them as they may spring up in the contemplation of others. Then may I hope for the day—and that not far off—when one *from among yourselves* shall worthily fill *this*

place which I now assume. Then may you trust that many will be born among you, who shall pass through a life of usefulness, and honor, and dignity, in *the service of their country,* and bequeath their illustrious example for the benefit of a grateful posterity.

DISCOURSE I.

Of the Principles of Government.

OF the quality and usefulness of the Science of Political Government. Of the Origin of Political Government. Of the Objects of Political Government. Of the necessity of a settled Plan of Power—or a Constitution. Of the Marks and Characteristics of a well-constituted Government: First; attention due to the Habits, Feelings, and Manners of the People. Second; Changes should not be sudden. Third; the External and Natural Condition of a country, and of its inhabitants to be observed. Fourth; of the Share which the people should have in the administration of the Government. That the share of the people in the government to be exercised by means of a system of Representation. Reflections on the marks and characteristics of good government which have been discussed; and on the political condition of India. Of the evils of Arbitrary Government.

DISCOURSE I.

On the Principles of Government.

SECTION I.

Of the quality and usefulness of the Science of Political Government.

I purpose in my present address to discourse on the nature of *Political Government*, and on its *true principles*. This is a topic the due investigation of which requires much thought, and extensive reading. It has exercised the most powerful minds throughout all ages. The doctrines from time to time laid down on this subject have been the result of much insight into human nature, and of a careful comparison of the laws, the manners, and the history of many nations. The proof and explanation of those doctrines have taxed the intellectual faculties to the utmost. And those who would study the quality of Political Government, with a view to practical application in public life, must bring with them habits of reflection, and a vigor of mind, beyond the ordinary endowments of mankind.

It would, therefore, be a vain thing in me to deceive the reader into an impression that through the course of one short Lecture I could afford that complete information in the Science of Political Government, which scarce any single voluminous treatise could supply. And some may perhaps feel disheartened at a commencement in my labours, which announces a call upon their attention, such as may be apprehended to be almost beyond their present capacity, and which at the same time appears to promise but very inadequate results. But to such let me hasten to say that the labours of many distinguished Philosophers of various countries have already furnished for the instruction of mankind a number of general and indisputable positions or principles,

the truth and value of which will be found by no means difficult of comprehension—and to all, let me say, that, confining myself to such fundamental rules, I trust to attract some interest in the discussion of them, and to satisfy my readers that such a discussion is entirely appropriate to objects we have in view.

In all well-governed countries there are certain *right principles* to be looked for, as distinguishing the plan of power which prevails, whence justice must flow, and whereon depend the well-being and the prospective advancement of the people at large. It is obviously fit that all those superior members of society who aim at understanding and contributing towards the welfare of their country should form clear notions of what these right principles are. But, more especially should it be a care with those who, warmed with that zeal for useful knowledge which I have endeavoured to excite, desire an acquaintance with the quality of the *English Government.* Those who, like myself, have been bred under the protection of that form of government, and who have had occasion to study its character, have been led to the conviction that there never has existed in any other country a system of government so powerful and so just—so calculated to defend the rights of individuals—to ensure the upright and effectual administration of justice, between man and man—and to protect every subject from violence and wrong. But it is *for the people of India,* as well as for their English rulers, to form a true judgment of the nature and value of the English plan of government, out of which is derived that under which they live, by conceiving just impressions as to what are the characteristics of good government. And my persuasion is that, the better the just principles of Political Government are known, the more firmly will the people of India become attached to the British rule, and the better prepared will they be to understand and to assist in improving that plan of government, and that system of law, under which their own rights are to be protected, and their political hopes advanced.

SECTION II.

Of the origin of Political Government.

The origin of government must be traced to human nature itself. The helplessness of infancy falls necessarily under the protection called forth from the natural love of the parents. The incapacity of the child, as contrasted with the superiority of the father, imposes the duty of obedience on the one, and that of direction on the other. Gifted with the faculty of speech, whereby to communicate their thoughts amongst each other, the whole race of mankind are drawn by this natural impulse to associate together. From such an association they immediately perceive their increased means through *combination in pursuits.* Such combination can however, have no existence without personal rule, or ascertained law, directing the common aims and actions of the whole body to the same ends. Neither can such combination be held together for any the least permanent purpose without greater security than each individual can assure to himself by his own unaided strength against the violence arising from human passions, and the mischiefs arising from human errors. As in the case of a family, so in the more enlarged circle of human society, in the bond of which mankind are equally by nature held, the differences in the intellectual power necessarily lead to the controlling influence and authority of such as are most highly endowed. Hence the directing and governing and controlling *power* of one, or of a portion, and the dominion of some fixed regulations, over a body of men held together by a greater or less strength of union. *Government* must thus be perceived to be co-existent with the very being of man: and we know of no tribe or race so entirely

degraded from human attributes, as to be altogether dissolved from every obligation to political authority.

In the progress of human affairs governments of almost every conceivable quality—over every variety of people—and of every territorial extent have existed in the world; and we have before our attention the histories of a thousand nations, from which we may draw instruction as to the comparative success, or the inherent merits, of the one form of government over another. The records of these various plans of power all disclose excellencies as well as defects. Every one of them fail far short of absolute perfection. Relieving ourselves from the copious *controversies*, and the laboured *reasonings* which many ages of disquisition on topics so interesting to every civilized nation has engendered, let us proceed to pass in review before us some of those *positions* which the ablest of political Philosophers have *established as settled truths and principles*, applicable to the consideration of *every* system of dominion.

SECTION III.

Of the objects of Political Government.

The just *object* of government can only be that of the *happiness of the people*—and it might be said, generally, *that* was the best form of government which best provided for their *happiness*. But in what consists the happiness of a *whole embodied People?* That of an *individual* greatly depends on circumstances having no other than *peculiar* and *personal* influence—his taste, his habits, his temper, his wisdom, his virtue, and so on. But, to form an idea of the well-being of a whole community, we must conceive some notion of more universal and permanent benefits—indiscriminately to be participated in by *all*. Let us fix it by adopting as a maxim (as it appears to me we safely may) that the happiness of *a people* consists *in the perfect enjoyment of private rights and acquisitions, and personal security from wrong*. These, then, are the main and final objects of good government.

Now, it is with a view to protection of all in their rights and acquisitions, and in their personal security, that, as well every provision to guard against foreign aggression, as all public internal laws, will, upon tracing objects to their principles, be found to be directed. It is the first practical application of the authority of a government, which is founded on a system or plan, to appoint the Ministers and Commanders for maintaining the independent strength of the country, and Magistrates with sufficient powers to enforce those public laws. These are the duties to which all such magistrates and functionaries of every grade and quality are pledged; and it

is in consideration of the just performance of those duties—so directed to these final objects of a well constituted government—that the emoluments and the honors of the magistracy are conferred. Thus we may gain an intelligent view of the whole scope and aim of political authority: for we must acknowledge that such is the best government which best ensures the happiness of the people; we can agree in the conception of what constitutes national happiness—namely, the perfect enjoyment of property, and security from personal wrong—and we are prepared to understand whence these sources and constituents of national happiness are supplied and upheld, namely, from the just performance of the *assigned duties* of rulers and their officers. The prosperity and strength of a nation does but little depend on a fertile soil, or the bounties of nature—inasmuch as the history of the world has proved to us that the most fruitful parts of the earth have often become deserts through the foreign invasions they have continually invited, or through internal decays; while great nations have flourished in those parts to which nature has denied almost every thing. But we must look for strength, and wealth, and internal peace, in those nations, where a settled government, and just, equal, and well administered laws have place, and in which every citizen is ready in his vocation to fulfil his duty to the State.

Observe, therefore, that supreme *rulers*, and all who *bear authority* under them, have but one just origin, and should have but one just object—namely, the *good of the people.* And this, indeed, is so evident a truth, that I might have spared to state it, did not the history of this country and of the surrounding Asiatic nations develope little else but one long continued violation of that plain maxim. It is fit that the people of India should know, and reflect on the evil, that the labour of multitudes in these countries has

been for ages expended in the supporting the pageantry, the idle indulgencies, and the mischievous vices of such rulers, and their families and their favourites, whose only arts of government have been how best to secure the fruits of their people's toil for *their own private* purposes. Monarchs who thus act, and those who would uphold them in their system of dominion, can never have reason or justice on their side ; unless there be reason in supposing governments to be established for the aggrandizement of one individual, or of one family, or one set of men, and not for the safety and welfare of all. But it behoves those who would think justly of the quality of any system of government, to inquire if there be any who, out of the labour of the people, appropriate wealth which has never been earned by their own or their ancestor's exertions, and receive it for the purpose of maintaining the magnificence of royalty, and the rank and honors of magistracy, without any corresponding *duties* whatever assigned, or adequately performed for the benefit of that country which supports them. If such there be, it will be well to consider them as leeches of the Common-wealth, who drain its blood but for waste. None can less deserve to be members of it than such as, having no concern whatever for the public, seek from the public toil to gratify but their own private interests. The world unwillingly contributes to the maintenance of men so utterly empty of desert.

SECTION IV.

Of the necessity of a settled Plan of Power—or a Constitution.

It is next to be shewn that it is of the very essence of Political Government that its *plan* or *scheme of power*—or what the English term the *constitution* of government—should be *fixed;* and that its method of exercise should be by the course of *laws*. Without this there can be no certainty of property, or security of person; which we have seen to be only purposes of government. Nor indeed, can property or personal safety be said to exist at all, when the power to which we must necessarily submit is constantly liable to change, and when the exercise of uncontrollable authority is restrained by no rules. It is an eternal truth that every man is by nature disposed to abuse that power which depends solely on his will, and that his abuse of it will extend up to very *checks* he may feel to be imposed against such abuse.

But, it may be said, have there not been great states—powerful in relation to their neighbours—peaceful and prosperous in themselves—who have been governed by the absolute authority of even one man? And do we not know of such states thus governed even at this day? This is a point I may do well to explain; for it will be found, nevertheless, that the maxims I have laid down are just.

It is true that great nations have arisen, and for a while have flourished, or appeared so to do, under no other rule of government than what depended on the arbitrary will of one man. But observe—first, that those nations which have been most famous in history for the power they have attained under one, or some few successive leaders, have

been also the most conspicuous for their oppression of their *conquered subjects*—and among such unhappy people, who have thus been reduced to hold their lives and their property at the mere discretion of their oppressors, Political Government, in its true sense of a fit exercise of power towards the just object of the public happiness, cannot be said to exist. Moreover, the *original followers or subjects* over whom such absolute monarchs have gained and put in force a pure arbitrary control, are far from the enjoying internal peace or security, *even among themselves:* inasmuch as it will be found that all the wealth and luxuries of life fall to the share of the monarch himself and of his favorites; who, while they devour those who are beneath them, tremble daily at the evils with which their superior may in a moment visit them; and inasmuch as the internal strength of the people, as an independent nation so governed, arises from the promptitude with which every individual sacrifices each wish and pleasure, and submits all his very faculties to the ordering of his prince. And, secondly, observe—that power of this arbitrary nature—a scourge to surrounding nations, and the unfailing source of much misery, and more discontent, to those subjected to it—can never *last long*. The struggles of ambitious men, which no regular laws restrain, and the vengeance of the oppressed, which soon or late becomes too strong for the fear of any consequences, unite to produce internal convulsions throughout the state, and rebellions also from without. The country soon becomes an ever-changing scene of wrong; and usually, in the end, surrenders itself either to a better government or to a more powerful people.

Such is the fate, and such the inevitable result, of arbitrary power, directed by *no rule*, and exercised *purely in subserviency to the human passions.* But it must be allowed that the form or quality of government, known by the term of *absolute monarchy*, has not always exhibited these

characteristics. It has sometimes happened that the union of mental talent, and a benevolent disposition towards mankind, has combined to establish firmly, and to govern prosperously, an extensive and powerful State. There have been also instances in which under the same supreme arbitrary authority of one man, such established states have been happily ruled, although much of that talent, and even of that disposition, has been wanting. But in these cases, it will be found, upon scrupulous examination, that one of these two solutions offer. Either the quality of the monarch is such that the course of his government is as surely directed towards the well-being of the state and the happiness of his people, *as if* it *was* directed by fixed laws—a rare occurrence, and so rare that it can scarce be quoted except from fabulous story—or that such absolute monarch is content to govern by fixed laws already settled, or newly enacted by such an appointed course as may best ensure their wisdom and efficiency. In fact, it is in proportion as great and good princes are observed to *resign* the exercise of power according to the dictates of the *human will*, and to submit to those checks upon its abuse which either *fixed laws* themselves impose, or prudent and respected counsellors administer, that their subjects can be considered as enjoying the blessings of political government.

It may be admitted, therefore, that absolute monarchies may exist, without implying the absence or utter dissolution of any systematic plan of government whatever—although, if such a course of exercising power was in reality *followed out in practice*, so as to exhibit in all acts of authority nothing more than the measures suggested by the *pure arbitrary* and *unchecked will* of one or more individuals, such an exercise of power would necessarily end in confounding all notions of right and wrong, and in a violation of all the essential qualities of political government. And, indeed, confined as the use of absolute power really is (with such exceptions I shall hereafter notice) *in practice*, by such re-

straints as laws and a due respect to the sense of the community imposes, that is a form of government which is not altogether without some advantages. For it must be confessed that it is a merit in any scheme of government that it should be best calculated to ensure promptness in the resolving upon measures, and vigour in working them out—a merit which is conspicuous in governments under absolute monarchs. So powerful are these considerations, that some philosophers, not sufficiently weighing the true principles of government, and in what consists that public happiness which depends on those principles, have been led to affirm that no scheme of government can so thoroughly accomplish the good of a people, and uphold their national strength, as the absolute will of a wise, and virtuous, and benevolent Prince.

But, even if this could be granted, and if we could suppose that under the form of absolute monarchy such instances of an union of great and good faculties were by no means rare—if we could suppose that the appetite for an undue share of the enjoyments of life in such princes and their obedient ministers would submit to the dictates of reason and of justice, or if we could hope that such would be satiated with wealth and the power by which it was to be gained—yet this form of government must ever manifest countervailing defects. There never could be any certainty as to the *permanence* of these dispositions, either in such rulers themselves, or in their successors. The established method of governing might at any moment be changed. The laws themselves have existence and operation frail as the human breath Those who shall consult the page of history will read of many great nations rising to eminence under the guidance of some powerful mind, and prospering for a time—but for a time only. A great conqueror collects an immense concourse under his banners, who over-run wide countries, and establish wealthy empires, and such empires

are perhaps well governed for a season. But as soon as the founder is no more, it usually has happened that his government has fallen with him. There being no *settled plan* of power, no *fixed rule* for the guidance of his successors—such governments are not calculated to stand the test of time ; but are necessarily subject to accidents, bringing in their train confusion, anarchy, and civil wars.

And in these respects there is no difference whether a nation be reduced to subjection to the will of *one* arbitrary monarch, or to the absolute power of *many* or of *few* who shall wield the full authorities of the state. For it is very possible that a large delegated assembly, or that a few who may have been born to, or have attained, supreme dominion in a state, may resolve to govern by no regulated plan, and may disregard all laws made for the protection of property or of the person. Whether they will govern without law, or whether the people shall find a sure refuge against wrong, and a plain guidance in their mutual affairs with each other, in their laws and the administration of them, must depend on whether such a *scheme or plan* for the exercise of the power of the state exists, as may more or less *prevent* the gratification of the *mere will*—for, in the absence of any such checks, *human nature* will impel the possessors of power, whether many or few, to accumulate at the expence of those who cannot resist them an undue share of the enjoyments of life, until all the just ends of political government are openly abandoned.

Thus, under whatever form or course of government a nation may be ruled, we must look to find some *fixed systematic scheme or plan* for the conduct of it, and to see that this scheme itself, and the method of exercising authority under it, should be founded on *laws*—before we can agree that the essential objects of political government are arrived at.

SECTION V.

Of the Marks and Characteristics of a well-constituted Government. First ; attention due to the Habits, Feelings, and Manners of the People.

Contemplating, then, political government as the *means* to a certain *end*—as a human device, through a certain settled scheme and through a course of prescribed *laws,* for accomplishing the social happiness of a people—let us next examine some of those *marks,* or characteristics, by which we may, perhaps, best judge of its being *adapted to its object.*

The history of the world—exemplifying the progress of man in obeying the dictates of his nature, by first congregating into rude societies scarce held together by force of any law or compact, and afterwards by extending their social unions into populous nations, occupying fixed habitations—is a history in great measure of *habits, feelings,* and *manners* among the human race. These habits, feelings, and manners have grown up, not according to any set of rules and principles *laid down* according to reason and upon deliberation, but by force of mere *circumstances and accident.* Every age and nation has its peculiar code of morals and of manners ; and the qualities of government are more dependant on them, than they on the force of authority or laws. It requires but a little reflection to perceive such to be the necessary result of the progress of mankind from rude barbarism, or savage life, to civilization ; and we shall presently advert to some of these accidental and external circumstances. But it is a well known saying, that *habit* is a *second nature*—and habits, therefore, however they may have arisen, will, like

the propensities of human nature itself, imperatively influence all plans and contrivances by which men seek to accomplish that which they conceive most to their interest and well-being; and, amongst others, every system which may have been gradually built up of political government.

But, if such systems of government have thus become connected with habits, and the quality of these habits has depended on accidental circumstances, it must follow that such systems or modes of government must be as various as the several nations who live under any settled rules of power. It must also follow that after these habits have grown up, and are interwoven as it were, and identified, with the feelings, or even the prejudices, of a people, and thus become a *second nature*, any violation of them would be a counteraction of nature itself, and a cause of distress and discontent. As, therefore, we see that diversities of government must arise, and the modes of rule *must* have become consonant to the various qualities, and peculiarities of feeling, of various people—so it is a just principle of government that its scheme and course of operation should continue to respect such habits as are found to prevail. It must be recollected that it was not in the *maturity*, but in the *infancy*, of civilization that governments took their rise; and that, however competent through power, through natural wisdom, through studious comparison of numerous political systems and laws, and through sagacious reflection on their scope and tendency, any rulers, or the ministers of such rulers, may in these later times have become to frame a just plan of power for the government of any given nation—such competency must necessarily have been attained long after certain customs and modes of life, certain common and confirmed opinions, and certain dispositions of the mind and feelings have taken too deep a root to be contended against without general mischief.

For this reason it is a commended saying of an ancient lawgiver, who framed a plan of government for the most enlightened nation of old times, that "his laws were not, "indeed, the best; but they were the best which that peo- "ple were capable of receiving." For this reason we may judge that caution to be at once benevolent and wise which restrains the Supreme Government of England, in the plenitude of its power, from imposing throughout their newly acquired Indian Empire the same scheme of political government, and the same fundamental laws, (however good in themselves, and however valued) as those which have arisen out of, and become adapted to, the condition of another class of our fellow-subjects. It will be sufficient that I should notice that implicit obedience to the personal dictation required by those in authority, and as willingly yielded by all others, which throughout many ages has been habitual to the natives of these countries—that general distaste and inaptitude to political discussion and legislation—I have but to allude to their zealous attachment to the institution and rules of Castes, to the customs of Descent and Division of property, and of Marriage, to satisfy my Native readers that a total subversion of such rules and customs, and an endeavour to square the feelings and domestic habits of one people with the laws made for another, would be as great a tyranny and violation, as the forcible transfer of their possessions without reason, and without right. For habits and customs, which do not originate in laws, ought to be amended by the introduction of *other habits and customs:* and it is an ill policy to attempt to change them *by laws.*

SECTION VI.

The same subject continued. Second; Changes should not be sudden.

I do no more than add the necessary consequence of the principle I am discussing, when I affirm the political maxim that all *innovations* in government should be *gradual;* and rather *follow*, than aim at *guiding*, the sense of the people. We know that change is a law of nature: it is not more exhibited in all material things around us, than in the mind and spirit of mankind. A blind or prejudiced adherence to arrangements once made, but which can have had no other origin than the exercise of the human intellect, is, not only to surrender the superior powers of an understanding necessarily improved by the force of experience, but is in truth a contest against necessity. Such contests, however, though vain as regards the issue, may have their effect in prolonging the endurance of evil. Modes and systems of government *must* change; and, like all other prospects in human affairs, they fitly form the subject of human consideration.

But, the mass of mankind are doomed to toil for the necessities and comforts of life, and can have little leisure to study the nature or value of political and legislative change. They are more prone to pursue with avidity, and to enjoy in complacency, the objects of their dispositions and habits, than to submit such feelings to the reason of any others. Opposition to these fixed propensities can, when the occasion of it is not seen and estimated, serve but to produce pain and anxiety of mind. Conformity with order and the law is the bond of peace and the test of the people's prosperity—but cheerful obedience to authority can only be

looked for from those whose passions are calm. How, then, since political changes *must* and *ought to be* contemplated, are such changes best to be effected? By such only who, *having sagacity* to *perceive* what measures may be profitable, and *maturely reflecting* on their tendency and consequences, will watch also the *spirit of the age;* and will be cautious that new laws, if they do not altogether conspire with that spirit, shall at least not counteract it—by those who shall ever be mindful that *reverence for the law is the only stable foundation of government.*

It deserves to be considered that no change is made without inconvenience, and that there is certain advantage in constancy and stability. There may be evil in settled or hereditary institutions—but, if they be slight, they should rather be endured than corrected at the imminent risk of greater mischiefs. For every alteration of fundamental laws tends to subvert that *reverence for authority* by which the force of law is sustained. And it may be that ancient laws which are good are preferable to novelties which are better. So that the fabric of government should be always touched with a fearful and trembling hand, and its very *rust* should be respected. It is not change itself, but *suddenness* and *violence* in change, which at once excites the disgust of the multitude, and loosens the ties which bind them in obedience: and he that shall investigate the progress of civil dissension will find as many to have arisen from sudden violation of prejudices, and even caprices, as from actual oppressions. But, when the unthinking multitude shall overthrow the frame of government and trample on its laws, we may be assured that they will govern rather in the fury of passion than in thoughtfulness of wisdom. In the violence of *their* innovations they will probably, indeed, conform to the *temper of the times;* but their measures will always, and the rather sometimes for that very reason, offend against the true principles of govern-

ment. In all circumstances of a nation, therefore, we may justly fear *the sudden introduction of political change.* In all innovations (it has been wisely and aptly said) we should imitate *Time.* For Time, though the greatest of all innovators, so skilfully insinuates change, as to deceive our very senses.

SECTION VII.

The same subject continued. Third; the External and Natural condition of a Country, and of its Inhabitants, to be observed.

Among those accidental circumstances which cannot fail to impress on the inhabitants of various countries varying qualities of feeling, habit, manner, and intercourse, we must chiefly reckon the *external* or *natural condition* of each such country—and it becomes a mark of the just observance of the true principles of government, that its plan of power and the spirit of its laws should have reference to that *external* or *natural condition*. It is impossible to doubt that the difference of climate, or temperature of the air, according to the position of each country on the globe, occasions a difference in the corporeal strength, and power of exertion, and consequently in the sensibilities, and even in the intellectual faculties, of mankind. Moreover, the great dissimilarity in the soil and situation of different countries produces a corresponding variety of pursuits. It would lead me into a wide field of curious observation, and perhaps of controversy, were I to examine into all the effects of such causes as these. We must be content with noticing what are most obvious.

It must be the natural result of that deficiency of strength and power of exertion, that love of quietness and repose, and that delicacy or tenderness of feeling, which a great comparative warmth in the climate begets—that the people living under it should become averse to change, that they should be incompetent to the heats and conflicts of political discussion, and that they

should be roused with painfulness, and collected together with difficulty, for the duty of withstanding aggression. In colder countries, on the contrary, the condition of the body and animal spirits urges to incessant activity and contempt of danger. If we survey the diversities in the surface of various countries, we find that the situation of some, as being islands, or abounding in wide rivers, impels the inhabitants to the arts of commerce, and to a stretch of dominion over distant colonies. The quality of others, as composed of fertile and separated plains, leads to a crowded population and a facility of intercourse. Over barren deserts tribes wander in the lawless independence of savage life—throughout the fastnesses of a mountainous district are scantily dispersed a few families, who know little of one another, and scarce any thing at all of the rest of mankind.

Here, therefore, we perceive general and conspicuous effects produced by these *external* circumstances I speak of, which as they have contributed to form the peculiar *characters* of the various nations of the earth, so must they have influenced the modifications of their several governments, and so must they ever dictate its principles and fundamental laws. In some countries the people are naturally more prone to implicit obedience to constituted authority, and adhere with greater stedfastness to the institutions and customs of their ancestors. Among them we may expect will prevail a greater discretion reposed in personal authority, and at the same time a greater permanence and simplicity in their laws. The inhabitants of another clime are less easily controlled, more inquisitive and more eager in all their interests, and more bold in their pursuit of them. Among them, it is observed that (should not counteracting causes prevent it) a system of government will be aimed at admitting a greater extent of popular management, and of means for the expression of the public sentiments

The openness and fertility of one country will be the perpetual source of attraction to fierce invaders, and preclude any long term of national independence—the barren ruggedness of another will repel the avidity for conquest. The small extent and the close population of some states will suggest the greater *union* of councils, and keep down the accumulation of laws—the wide expanse, the slenderly connected portions, or the vast commerce, of other states produce necessarily a proportionate *delegation* of authority, and complexity in the rules of property. The mind easily gets puzzled in the endeavour to trace the bearings of all these diversities on political government. It has been accomplished, however, with great success in the laborious writings of some eminent philosophers; and in a manner as instructive as interesting to the studious inquirer. But these are details quite beyond the scope of a discourse so comprehensive as this; which must confine itself to the extraction of general maxims and positions. It must be sufficient if we can make it manifest, how vain must be any idea that the fancied perfection of any particular system of government must recommend it to the *universal* adoption of all nations, however circumstanced. Let us rather feel assured that the *natural causes* of national character are altogether above any human sway; for the empire of the elements is stronger than many generations of lawgivers.

SECTION VIII.

The same subject continued. Fourth; of the Share which the People should have in the Administration of the Government.

But the most important mark of the true principles of government, in the consideration of such as concern themselves practically in the just observance of them, is—that the bulk of the people should have some *share* in the administration of that government which the whole community is bound to obey.

Let us inquire what it is *to have a share* in the government. A man may be said to have a share in the political government of his country, either when he *assists, or has a voice in, the supreme ordaining of the laws* of the state, under which its scheme subsists, and the administration of all its powers is conducted—or when he *contributes personally to the actual administration* of those powers, under the control of such supreme authority. Let it be observed, here, that I speak of a political government subsisting under some *regulated scheme* or *plan* of power, and governing by and under *laws*—and I speak of those who personally contribute to its administration according to such constituted scheme, and under the guidance of such laws. A monarch, or an united band of men, governing a people without any settled scheme, independently of any rules of law, and under no check, cannot be said properly to constitute any political government whatever. If he, or they, should govern, merely by the impulse of their own will and passions, how are they otherwise than in a state of nature? For a state of nature is that in which people act purely according to their

own temporary inclinations, and their own notions of self-interest. So neither can he who performs the functions assigned him in a state, according to the mere will of a monarch or governing body, be properly said to have any share in political government. He is a mere tool in the hands of others. He cannot have a share in that which has no substantial existence. He possesses no political rights of any kind. He is but the medium through whom another party acts—and acts as if in a state of nature.

Some such a share in the political government of a country as I have above defined *a portion* of the people must enjoy under every form or scheme of government which is based on fundamental laws, and which aims at governing by a course of general laws, and not by mere arbitrary and personal discretion. The share enjoyed may be very unimportant, and the portion of the people possessing such share may be very small. But, still, so long as these fundamental laws on which the scheme of government is constituted has force,and the general rules of laws according to which it is to be administered are observed, no man can have an unlimited power to govern by his own will. The wishes and interests of others, as protected by the laws, must be respected as well as his own, in the administration of the government. There must be one or more persons who has independent authority to advise at least, if they do not actually partake in the exercise of the supreme power; there must be several to whom the administration of the affairs of government is intrusted, who are to be guided in the performance of their duties by the laws only, and not by any individual's arbitrary direction, and who are responsible only to the control of that supreme authority which is shared in some degree by a portion of the people, and not to the sole authority of one man. When all participation and influence in the supreme governing powers of the state are denied to any portion of the people, and all means of administering the laws independently of arbitrary dicta-

tion are destroyed, the foundations of regular political government are torn up.

When, however, that share in the exercise of the supreme power is very limited, and when it is extended, moreover, to but a small portion of the people, such a scheme of political government can by no means be considered as founded on just principles. There is no security whatever that the fundamental laws on which it is based will long subsist—and still less that justice will long continue to be administered according to any settled rules of laws by such as exercise offices in the state. And for this reason—because every man (as has been observed before) is impelled by his very nature to seek the gratification of his own private interests, and to exert all his power in administering to his own inclinations, rather than to labour for the general good of a community. And, as there is no limit to his *desire* to attain what he considers the pleasures and enjoyments of life, so neither will there be any limit to his consequent efforts at engrossing all the power he can, as the means of enabling him to appropriate to himself as large a proportion of them as possible. With this view he will always feel disposed to disregard laws of every quality which he is not compelled to obey. And, thus, when one single man, or a very few individuals, shall have once obtained the supreme governing authority, and only a small number of the people have a very limited share in influencing or guiding the measures of the state, those who govern will be almost sure to abuse their power. They will be engaged in a continual struggle to abolish, or to abandon, all those settled rules and forms according to which the government is to be conducted. They will ever be more or less labouring to overawe, or to annihilate, the suggestions of others. They will hardly allow any who are under them to exercise the offices of the state according to any equal rules of law, but only as their own tools, subject to their own absolute control. The

tendency of such a struggle is to destroy political government, and reduce society again to a state of nature, in which the strongest govern, and seize to themselves whatever they desire.

It must, then, be obvious that, in considering the question how far just principles characterize any particular form of government, we have not merely to enquire whether one single person possesses the whole power, or whether a few persons possess it, or whether even a larger number of individuals possess it. But the question is, whether *so large* a number share in the supreme power, and have in their various gradations a share in executing the duties of office, as *to produce an effectual check* on the inclinations of one portion of the people to pursue their own interests at the expence of the rest. A few men, or even a large number, may combine to govern for themselves alone; and history has abundantly shewn that they often will do so. But when the sharers are very numerous, such a combination becomes more difficult. The interests of many being at stake, it becomes the less likely that they can all be equally gratified through the oppressions and wrongs done to the body of the people who have no share in the government. The interests of one portion of the governing body become a check and control upon the exorbitant desires of the other. The number is increased of those who love their country and respect its laws, and who act from such motives. And if, besides this, the system of government be such as to admit of any methods by which the sentiments and feelings of the Public at large can be made known—so that their opinions may *influence*, although they cannot actually *direct* the measures and councils of those who govern—the chances become the greater that these measures will be directed to the common good of the nation. Moreover, when the various offices of the state are distributed widely among the people, and all the members of the community, having

free scope for their industry and talents, are admissible to those offices, according to the gradations to which they attain in society and the qualifications they possess, there is the less probability of their becoming the mere instruments and tools for performing the will of others, rather than their just duties according to the established laws.

It follows from this that the merit and perfection of any plan of political government ought to be judged of according as it admits the largest number of the people to have such a share in its administration, as they are qualified to exercise. And no system of political government can be completely well constituted, unless it shall admit of the *bulk of the people* to some such share. For, let the number be as large as it may of those who govern, if there be any portion whatever of the people of a nation who have not the slightest power or influence in the state, nor the capacity of attaining to any; but are bound to submit at once, without any means of resistance or even of remonstrance to the measures of others—that portion will be certainly wronged in some degree. For the governing body will govern for their own interests generally, without regard to the interests of this portion of the people. The governing body will be the masters—attending in the name to their own advantages and enjoyments—the others will be either as slaves or strangers in the land.

It is manifest, however, that each member of a whole community cannot act for himself, either in the framing and ordering the laws of his country, or in contributing to the administration of them. Nay—it is only a very few indeed, compared with the whole number of a people, who *can* exercise the most limited functions of the supreme power, or who can be called on to fill the any of the various offices of the state. The mass of the people *must* be destined to pursue their several private avocations in life, and to yield obedi-

ence to the few who govern, whether such few do indeed govern according to the laws, or according only to their own will. All efforts by the body of the people to govern for themselves, would—even in the least populous of all nations—lead to confusion and the struggle of factions; and, in the end, to the mastery of one, or of some small united body. And thus it would appear that, so far from the bulk of the people, by the share that it was possible they could attain to in the political government of their country, having the means of checking the natural impulse in the few who govern to destroy the scheme of government, and to disregard the laws—a small portion of the people must necessarily have the whole power; they will certainly strive to abuse it; the rest of the community will certainly be more or less wronged: and they will be treated either as slaves or strangers in the land. Hence it might be concluded that under no scheme of government can it be properly a principle that the bulk of the people should have some appropriate share in its administration.

The world may perhaps be still young—and the progress of civilization has, it may be hoped, left mankind as yet far short of that maturity in understanding, and in social happiness, which may be destined for our race. But, alas! the history of nations has hitherto afforded few examples of a frame of government likely to last; or which has not, in the means supplied of disregard to the common interests, carried in their very constitution the seeds of decay and death. If this, indeed, was the law of human nature, lamentable would be the condition of mankind. Impelled by human feelings and necessities to unite in societies—upholding that social union by force only of political government—establishing schemes of government which must become, as it were, self-acting engines of oppression—the race of man would appear to have been created as the sport of demons; and the history of nations would be but the history of alternations in human suffering.

SECTION IX.

The same subject continued. Fourth; of the Share of the People in the government exercised by a System of Representation.

We must not, however, pronounce all idea of correct principles, and of permanency, in the constitutions of political government to be a mere fanciful illusion. There have been some approaches towards perfection. An investigation into the qualities of those national governments whose merits have been most conspicuous will disclose the true spring and force of such government to consist in its *representative faculty.* The bulk of the people cannot, indeed, engage in the actual administration of the affairs of the state, or in the duties of office. But they can exercise *their share* in the government through the medium of others who shall *represent* them. In this lies the virtue of political government. It advances towards perfection, according as the system devised for having the interests of the national community represented approaches perfection. And, in this view, it is certainly one mark and characteristic of a well-constituted government that its system provides for all ranks of the people, according to their station in society or their qualifications, *the means of access to office.* It is true that but few can actually *attain* to office—yet if it be *open* to all by their industry or their talents to attain the requisite *qualifications* for office, and if no individual so qualified is absolutely excluded from being selected by the constituted authorities, then do all ranks of the people to a certain extent possess a share in the administration of the government of their country. And this share, from the circum-

stance of the means of attaining office being so generally diffused throughout the community, becomes in truth a share according to *the system of representation.* For the highest councellors of the state, and the highest magistrates, even though they should hold their offices by *hereditary* right, do not act according to their private will, but for the sake and on behalf of the body of the people. And, although these particular individuals who have themselves *inherited* such offices and functions in the state cannot be said to hold their offices through the express will of any particular portion of the community, or to perform their duties in the place, and as representatives, of any such particular portion—yet, when this station itself so clothed with the privilege of transmission by course of heirship, is attainable by all classes according to certain merits and qualifications, we may justly consider such hereditary magistrates as representing, and exercising on behalf of the public, some share in the administration which belongs to the people at large. More plainly is this the case as regards offices to which functionaries are *appointed,* either by the constituted authorities, or by the express voice of the people themselves.

Such a share as this in the government of their country—consisting in the *means of access* to all the honors and offices of the state being afforded to the bulk of the people—whereby the interests of the whole community are more or less represented and protected, is a mark or characteristic of most of the civilized governments of Europe. But, with far the greater number of them, it is the only share in the government possessed by the general community. A share in the actual supreme controlling and legislative authority of the state, exercised by means of representatives freely and expressly appointed by a qualified portion of the people themselves, is a characteristic of very few of such governments. It does not follow, indeed, that such countries are ill-governed; or that the true end and aim of all good go-

vernment may not have been eminently accomplished in such governments. Neither does it follow, even, that such countries could be better governed by the adoption of a more complete system of representative administration. For, as has been shewn before, there are various other principles of government, besides this of a share by representation, which ought to be observed in adopting a scheme of political government to its ends and objects. The habits of a people have to be respected—sudden innovations in government have to be avoided—and the condition and circumstances of the people, and of the country, have to be regarded, from whatever causes they have arisen.

But although, under the circumstances of some countries, a more perfect form and scheme of political government by representation may not be at once practicable, yet it is fitting that this most important quality and principle of good government should be at least thoroughly understood, so that its application be kept in view as far as a due consideration of the position of the people will allow. For the bulk of the people may have the means of access to power, yet if the selection to office is to depend on the mere will of one man, or body of men, at the head of the state, who govern altogether independently of the opinions or influence of the people, the parties selected for office will rather be servants of the head of the state than of the bulk of the people, and will do his bidding rather than their's. And, even though such functionaries may be appointed by the express voice of the people, yet if they be no longer afterwards dependant on the voice of the people, they will be apt to govern for themselves or for their other masters. The constituted scheme for the government of the state, and the public duties assigned for the protection and prosperity of the people, rest not on a durable foundation. They are liable to change, and to disregard, according to the interests of those who have the entire power of pursuing their own in-

clinations. The system of government is imperfect, and as a natural tendency to the rule of the arbitrary and tyrannical few, aiming mainly to gratify their own unlimited desires, over the submissive many who have neither influence nor power to check them. There is wanting, therefore, something more to render a representative faculty in the government complete. There requires a system of representation which is to have *continual operation*—a representative system which is to have a controlling and a restraining influence as a *supreme authority*—which is to aid, directly or indirectly, in every measure of the state, and even in the preservation and improvement of the very plan of power itself under which the administration of government is conducted.

An absolutely perfect system of representation would provide for supplying a fit number of the best qualified persons to express the will, and to protect equally the interests, of the whole body of the people. For if every law and every act of the government was in precise conformity with the will of the whole body of the people, it is certain no injustice could by possibility be done to any single person throughout the nation; since no man would will his own injury, nor would even a majority of the people will any thing which would be the gain of a few only, and a detriment to the majority. And, if the equal interests of all were aimed at, and such persons were appointed to govern on behalf of all who were best qualified to judge of those common interests, human wisdom could neither devise nor desire any better scheme for the protection and advancement of those interests. But such a system of representation is a mere conception, and practically impossible. It would be utterly vain to seek for an unanimous desire or an unanimous opinion of even a small portion of the people upon any political subject. If the opinion of the majority of the people, or of any portion of the people could by possibility be ascertained upon any political measures; it is certain that

but very few of such a majority are *competent* to form a judgment of the quality and tendency of such measures or even to give their attention to them. It is manifest, therefore, that the will of the people, expressed under any system of representation, can only extend to the *mere election* of their representatives, and to the retention or change of them, according as their general conduct and services may, or may not, give satisfaction.

But what is that mode of election which is best calculated to ensure the services of those who are best qualified to pursue, and to pursue honestly, the equal and true interests of the whole body of the nation? It would be vain to say that a mere majority of the people could best decide on such qualifications, and could be relied on for choosing such as possessed them. Suppose the whole community divided into so many sections, and each section should elect one or more representatives by a majority of the members, each having a single and equal vote. Then might, and probably would, the least educated, the most incapable, the poorest and most dependent on others (which constitute much the largest proportion) out-vote by a great majority the opinions and decisions of the wisest in the nation. No one could rationally desire that women, or children, or those so utterly destitute in their circumstances as to be dependent altogether on the will of another for the means of life, should exercise equal rights with all others in choosing representatives to rule the state on behalf of the people. In every system of government which has admitted, in however extensive a degree, the principle of representation, *some portion* of the population have been excluded from such right of election.

A sound and beneficial system of government through which the bulk of the people are to obtain their share of political power by representation must depend, therefore,

on some appropriate test of qualification being required in the electors. The true tests, indeed, of such qualifications are moral virtue and intellectual ability. But, as no rules can be practically enforced for examining into and ascertaining the mental and moral qualities of individuals—where nature herself has not fixed the stamp of incapacity, as in the instances of children, or of dependence, as in the instance of females—some other external test has to be resorted to, if any there be, which may be betoken the probable existence of these qualities in a greater or less degree. The only test of this kind which can be appealed to is *that of Property*. The possession of wealth does by no means afford the absolute assurance of superior mental cultivation, or of superior moral virtue: neither do those qualities always increase in proportion to the increase of riches. But the experience of nations has proved that, generally, (unless a vicious scheme of political government should oppose it) the mind becomes elevated, the manners become refined, the moral virtues expand, and intellectual cultivation prevails, according as the national wealth abounds. It must be plain that independent means raise the possessor above the temptation of many of the meaner and most injurious vices; and they also supply that needful leisure for education, which alone can render the mental powers efficient. And, as property is the most likely test of the requisite qualities in those who are to choose their Representative, so is it the fairest. For the acquisition of property, as among the means of human power and social happiness, is the most open of any to all classes of the people in a well-governed state. But, in truth, the influence of property must, from the very nature of things, always be supreme in a well-governed state; because the self-interests of mankind will always impel them to give their labours and services to those who are most able and most willing to reward them. If those who had little or nothing did not pursue their own private interests by *this* course, they would still nevertheless

pursue them; and the only *other* course open to them would be by lawlessly invading the property of others. Property would thus change hands, but either it would have its supreme influence, in these new hands—or else it would in like manner be invaded and destroyed again. But, to suppose a total insecurity and open violation of property, is to imply a dissolution of the bonds of government, and even of society.

From these considerations it will appear that the merit of a system of government, in which the bulk of the people have a share by means of Representation, does not consist in any provision for the will of the people prevailing and becoming actually operative, as regards the measures of the state—but in just provisions being made for their electing such as are most competent to act for their interests, and through whom their opinions, and wishes can be expressed. Still, however, this is not enough. A fitting and well-qualified portion of the people may have been constituted to exercise the power of electing Representatives. Those Representatives may be the best capable of perceiving and pursuing the measures most conducive to the service of the common welfare of the nation. They may be of sufficient number, and may possess sufficient power to check and prevent the misgovernment of the other constituted authorities of the state. But they may themselves abuse their power, and seek to serve their own interests, rather than those of the community whom they are delegated to represent, and on whose behalf they are appointed to act. And it is likely they will do so, unless the community has the means of securing itself from their misgovernment, by making it more their interest to govern well, than to govern ill.

These means *it* may have by limiting the duration of their authority, and making them responsible, at the peril of losing their appointment, in case of betraying their trust, or

of evincing incapacity to fulfill their duties. The mass of the people are not, indeed, capable of judging well of the various measures of state ; nor is it possible to provide them with the power and opportunity of dictating such measures ; but they are competent, as a body, to judge of the general conduct of their Representatives, and to determine on the quality of that conduct by the effects. Dishonesty, corruption, and tyranny can hardly escape their notice. If the duration of their appointment be so short as that no advantage gained in such a period would compensate for their consequent dismission from office, the public would have the security of their own interests for the faithful fulfilment of their duties by their Representatives. In that case, also, the sacrifice of the interests of the community by measures injurious to the common welfare would be the sacrifice of their own interests as a members of that community. The interests of those who represent become in this way the very same as those of the represented. A complete practical union of the whole body of the people is formed for checking the injustice, and rectifying the misgovernment, of the few to whom the actual exercise of political power must necessarily be entrusted.

SECTION X.

Reflections on the Marks and Characteristics of good Government which have been discussed; and on the Political condition of India.

Thus have we examined, though but superficially, into this characteristic virtue of political government,—consisting in the *share* therein to be vindicated by the bulk of the people—and which is the most difficult and controverted problem in the science of politics. It is very fit that this quality of government should be sifted and known by all enlightened citizens. But such citizens will be cautious how they are led away by specious and half-considered doctrines on such momentous topics. It behoves all such to weigh in their minds that, as no system of government can be perfect, so none can be adapted to every variety of people. Bearing in remembrance the true, though ideal, principles of government, the reflecting and influential portion of every nation will still hold in their consideration the peculiar circumstances of their country, both external and personal, as regards the people. They will have to mark what is their general advancement in civilization, in sound knowledge, in religious purity, in moral disposition, and in rational habits. On this must depend the qualifications, not only for conducting wisely and beneficially the powers of the state, but for even selecting such as can be entrusted with such authority. Each man's share in the government must depend not only on the general condition of his country, but on the varying personal qualification of the individual. Give the flute to the musician, and the helm to the pilot. Let the lawyer advocate causes—let the statesman propound laws.

It is a vain, and it is a fearful thing for a people to aim at fundamental changes in their schemes of government, by grasping at a greater share of power than their qualifications in mind and manners will allow of. More than two thousand years have elapsed since many just principles of government have been from time to time expounded. But experience has proved that a wise and efficient *representative system of government* must be the slow growth of ages; and perhaps but *one* such system has ever arisen on the earth.

That no such empire should, in the fortune of nations, ever have been founded hitherto in India, will be easily accounted for by those who shall have studied its history with reflection and discernment, and computed the various combinations on which the formation and endurance of every mode of government must depend. Independently of those inherent natural causes influencing the destiny of nations, on which I have already dwelt—independently of considerations of the national religion and the customs of Caste (topics which I have purposely abstained from touching upon in this discourse but which, as all must feel, inculcate a peculiar degree of implicit obedience to mere personal authority)—there are other causes for the past and present political condition of India which can only be sought for in the great chapter of worldly events. What the real history is of the various tribes inhabiting this vast country during many early ages, we must be content to be ignorant of. But we know that, during the progress of several later ages, India has been subjected to repeated conquests. It might have been well if the conquering invaders, had brought liberal institutions, liberal arts, and sound knowledge, in their train. But, unhappily, this wide country has ever, till of late, fallen the easy prey of savage nations; who, without civilization amongst themselves, without rational laws or any systematic plan of political government,

have conquered but for the purpose of plunder, or have ruled with no other object than exterminating oppression. If, under the decrees of Providence, the people of India have now fallen under the sway of another foreign nation, it will be well for them to estimate what changes have been thereby introduced, as regards the happiness of the general community—consisting, as I have declared, in the more perfect enjoyment of private rights and acquisitions, and personal security from wrongs. It will be well that the people of India should estimate how far it is sought that society should be held together by requiring that every man should do his duty by his neighbour, and assist in obliging his neighbour to do his mutual duty towards others—that they should examine the quality and tendency of their new institutions in rendering them *fellow-subjects*, and not dependents and slaves. Those who shall follow me in the task I have set myself will, I trust, learn how, *as such fellow-subjects,* they may, and ought to, contribute toward the preservation of the present government. I hope to exhibit to view a plan of power introduced here which, excluding no subject from office and honors, is framed to call forth the interest and assistance of all, and is rightly founded on principles which, according to what is beneficially *practicable,* shall accord to the people at large their just political share.

There can be no standard of a perfect government, framed for eternal duration. For even were it within the compass of human genius to devise such a plan of power as might unite every true principle of political government (as it assuredly is not) yet are the *human passions* beyond the scope of legislation. The force of ambition and desire continually urges us into new efforts for their gratification, as irresistibly as the external elements work out their changeful revolutions. Vicissitude is the inherent and universal law of nature. In vain, therefore, have the chiefest

among philosophers projected schemes of a perfect commonwealth; the very names of which have come proverbially to denote impossibilities. Equally vain, but far more mischievous, are those agitations of the people impelling them to seek for *liberty—constitutional liberty—political liberty* (terms as yet unknown to my readers, and but ill understood by those who most use them) in some peculiar modification of the powers of government, whereby the actual sense of the whole community shall be taken in every act of the state. The plentiful experience of many nations has taught us that under governments of this kind as much oppression, and as frequent dissension and change, will arise as under any other.

What, indeed, is *political liberty* I should at present vainly attempt to explain; nor will it admit of exact definition. But, from what I have observed, I think all may rest convinced that no man can pronounce it to consist necessarily in this or that particular modification of the powers of government; but we may confidently assume it to exist in proportion as those principles of government which I have endeavoured to lay open are observed. We may look for it under those governments—where the plan of rule, or *constitution*, expressly provides against the abuse of power—where the *law* sets bounds to the human will. It consists in security from wrongs which the arbitrary will of another might inflict; and in the opinion of safety. *Freedom under government* is that freedom which is *left*, after the just protection of the social rights of others shall have been provided for by standing rules to live by, common to all—a freedom to follow our own will only in those things where such sound and just standing rules prescribe not. For there can be no liberty without law.

SECTION XI.

Of the Evils of arbitrary Government.

I cannot better enforce these last observations, and close the important subject of this discourse, than by contrasting a scheme of government framed on these just principles with that arbitrary power which is guided by no other rule or measure than the *will* of the supreme governor.

Under such a government, there can be no other good or evil than such as depends on the passions of an ignorant Prince. He errs—for who will be bold enough rightly to instruct him whom all must at every peril *please?* He is vicious—for there is no restraint on his appetites. The good is as subject to accident as his caprice—but the evil is as sure as the propensities of men are wicked.

Under such a government there can be no real love for the Prince, nor reverence for the Laws. For, how can those who have any independence or nobleness of spirit love one whom they are ever bound to *flatter*, and whose very fancies and most unjust commands they are bound to obey? How can there be any reverence for laws which can never be certainly *known?* *Fear* is the true spring of such a government. Not the fear of bad men to break the law and wrong their neighbours; but the fear of good men, as well as bad, to disobey the very worst command of an absolute Prince, or to resist his utmost oppressions. For such an arbitrary governor will know that, should the sense of terror be relaxed, and any dare to dispute, or even discuss, his orders, his authority, the sole power of his government, is weakened—those who under such a tyrannical sway cease to fear instant

destruction from disobedience will assuredly begin to govern for themselves.

Obedience, therefore, must be instant and implicit—without reasoning, without remonstrance, without representations. For if terror be the grand instrument of such a course of government, the monarch will set no bounds to his desire of increasing the force and perfection of this instrument. To some, for his own *ease*, he *must* entrust a portion of his powers—but they will not be many, as they would occasion faction and conspiracies ; nor will they be virtuous or high-minded, as such might lean to resistance. From the few, therefore, who govern in his name, the absolute monarch will exact precise conformity with his will, under pain of the heaviest and most certain punishment. The few submissive minions, who govern in his name the mass of the people, must accomplish the commands, and uphold the power, of their master by the same course. Where are the limits, then, of cruelty and oppression ?

Under such a government there can be few, if any, faithful advisers. All must advise in peril of their fortunes and of their lives. Those who should counsel the Prince well for the interests of their country, would advise something contrary to the bent of his inclinations or to the exorbitancy of his desires. They would advise equal and certain laws, and measures which would conduce to the security and independent spirit of the people. Their counsels, therefore, would tend to weaken the force and main spring of the government ; namely, that fear, which dictates instant submission to arbitrary will. They would advise what would end in convulsions in the state, or else in destruction of themselves.

Can such a state prosper? Look at the nations around India, governed as they are, and have been for ages, by

arbitrary rule. Compare their condition with that of any other, even the worst governed, nation in the civilized world. It is throughout these Eastern regions of the globe that the most prominent examples of this species of government have prevailed—but, although we find there the most ancient of nations, we find among them the slowest advances made in all that constitutes the happiness and resources of a people. Such as they were several thousands of years ago—such are the most of them at this present moment. With minds debased by fear they can have little taste and little appetite for knowledge—nor will the cause of education thrive where the supreme ruler, aware that knowledge is power, will never seek to abate that ignorance in which lies his own preservation. Can science or the arts of life flourish, or can industry abound, where there is no safety for the person, or security for possessions? Why labour—why seek to amass wealth—why engage in enterprises—if by the displeasure or rapacity of one man all may in a moment be ruined, and there is no certainty of enjoying any condition of life, or the fruits of toil, even for a day? In former times there have been governments in India, under which every individual's possessions fell to the Rajah at his death—with whom it rested to seize or to resign them to his family. Can any spirit for useful exertion survive in such a state as this?

Riches, indeed, or what the ignorant herd of mankind deem to be such—may abound. The precious metals—which are of no value in themselves, and do but *represent*, or *give pledge* for, the commodities of life in the same manner as scraps of paper money may—are often found to accumulate. Costly jewels, which have no other value than what the fancy may invest them with, are seen to glitter in brilliant heaps. Many of the sources, also, of sensual pleasures, and of amusement to the unthoughtful and uninformed mind, may exist to excite desire, or even admiration. Riches such as

these may abound for a time in nations knowing no other law than the will of their monarchs. And they will be found spread, as it were, round the footstool of the throne, for the enjoyment of the Prince and of those whom he may be pleased to favor—the spoils of forced labour and extortion. But, of that *true wealth* of a nation, consisting in the general diffusion of all the products of labour—which nourishes a healthful population—and fosters the universal spirit of a people to maintain their possessions in security—there can seldom be any signs. The hoarded treasures of the monarch, however, generally becomes, soon or late, the prey of some conquering spoiler, whom it little concerns the people at large to resist. For what can a people governed as these are suffer from any political change? Having nothing they can securely call their own; doomed to their share of general toil for the benefit of others; and holding their lives at the disposal of a master; can it matter to them by whom, or how, they shall be governed? "I will send *my boot* to "govern you," said the absolute Prince to his subjects, lamenting his protracted absence from his country.

Nor if such a people could escape the frequent miseries of plundering invasions, can they ever hope for any duration of internal peace. For where there is no settled constitution or plan of power, there can be no regular succession to authority. It may be that the sense of the people, or the will of the monarch, may destine the succession to proceed in a certain line. But the will of the monarch continually changes. By force or by fraud he may be *made* to change the destined succession—by falsehood he may be *represented* to have changed it. There is no rule but the power of a faction to determine it. Accordingly we find, in all the countries round about us, the demises of their sovereign occasion periodical convulsions throughout those states. Few instances of such demises occur without a struggle for the supreme dominion—nor are such struggles ever unattended

by bloodshed and violence; often do they convert the land into a scene of universal devastation.

Such is *government without law.* Let us turn our eyes to a different—a noble spectacle.

DISCOURSE II.

On the Government of England.

OF the Nature and Origin of the English Constitution. Of the Supreme Legislative Authority of the English Government. Of the Queen in her Legislative Capacity. Of the House of Lords. Of the House of Commons. Of the Mode of Enacting Laws, or Statutes. Of the Executive Branch of the English Government.

DISCOURSE II.

On the Government of England.

SECTION I.

Of the Nature and Origin of the English Constitution.

THE people of England have established a certain peculiar plan of government which has become celebrated throughout the world by the general term of its *Constitution.* It consists of a scheme of rules, according to which the supreme uncontrollable authority, prescribing what shall be done, and prohibiting what is not to be done, is to be exercised.

It may be thought to require some explanation how any such form of government can be said to be *established*—or how, if so established, this can be said to have been accomplished by the *people.* It may be objected, that in whatever person, or body of persons, and under whatever set of rules, the supreme authority may have been confided, such authority being supreme and uncontrollable may enable the governors to alter these rules and change the model of the constitution altogether. And it may be asked, how can it by possibility be shewn that the *people* at any time, or by any direct course, or even by any indirect method as acting by representation, arranged and settled this scheme of power.

But the constitution of England may be truly said to be *established,* in this sense. Those who come to the exercise of their supreme controllable authority were not originally *born* with it. A people with a governing body were not *all*

at once created by supernatural power. Those who take up the sceptre of supreme authority do so either by wrong and violence, and injustice to others (which is a course of government without any plan or rule whatever—and not the subject of our present consideration) or else upon concession and agreement of the community either express or understood, as regards the terms and objects of their government. If, therefore, such rulers, taking up their authority upon concession and terms, shall betray their trusts, shall abandon their duties, reject the terms, and overthrow the prescribed constitution by which they are to govern—things have reverted to the same condition in which they were before any course of government was conceded or agreed upon. The rulers on the one hand, acting without any sanction of the people, and without any reason or justice on their side, have recourse to new methods of political association—and the people, are called on to devise or concede to some new plan of power, which, with justice and right on their side, they are entitled to have recourse to. There is no longer any political government at all, until either by wrong, on the one side, or by the exercise of the natural right of the community at large, on the other, to concede or agree to the terms on which they will be governed, a new scheme of power is settled. That form of government, therefore, may be properly said to have been *established*, independently even of that supreme uncontrollable authority appointed for exercising the powers of government, when the constitutional rules of such government are set and prescribed for the rulers as well as the subjects, and cannot be invaded or altered even by the supreme appointed authority itself—unless the sense of the community at large be newly taken as agreeing to such changes—or except such supreme authority shall, by dissolving altogether the bonds of all political government, remit to the whole community at large the original natural right of acting for themselves.

So, also, may it justly be said that the *people* of England have established that scheme of government by the constitutional rules of which the supreme authority may be bound to be guided by in the exercise of political powers. It is true that no precise period can be pointed out when any particular form and scheme of government was laid down by general consent. It is true, indeed, that the fundamental rules of the English Constitution, or frame of government, has been constructed gradually, and as it were piecemeal—one rule of government after another. And this is, in fact, a peculiar merit, and source of stability, in the English scheme of government, that, instead of being the product of mere prospective contrivance, it is the growth of ages of experience, and of the reflection of many generations of powerful minds on the true sources of political evils which have been actually suffered, and of political excellencies actually proved. In the long history of national vicissitudes through which the English government has passed, ample scope and opportunities have been afforded, not only for ascertaining under what rules and principles the people can be best governed so as best to secure the true and just ends of political government, but also to collect the general and repeated expression of the united public voice of the people at large on behalf of the political interests of the community. Often have the oppressions and selfish grasp of power by the *Sovereigns* of England extorted the indignant and successful opposition of the bulk of the people—sometimes the partial and overgrown authority of the *higher orders* in the exercise of the political functions entrusted to them, have required restraint at the hands of the people or at those of the Sovereign himself—often, also, has the wild or misdirected passion of *the multitude* overborne the deliberative councils of those most competent to conduct with regularity and efficiency the course of government; and thereby the people have themselves come to learn by disastrous experience how fatal to national prosperity is the absence of control over the

popular will, or rather over the violence of the various parties who struggle to guide that will. It has been in the progress of vicissitudes of this nature that the people of England, as a general body, acting in their various classes, and according to their positions in the state or in society, have come gradually to fix rules and limits for the exercise of the supreme authority in its various branches. By some they have been introduced—by others they have been conceded to—by all parties capable of judging they have been for many generations examined, discussed, and proved. They now form a plan of power fixed in the conviction and in the affections of the people—a noble fabrick raised by the labour of many centuries, the pride of our nation and the envy of our neighbours. It has been able to resist the storms of political ferments through many ages; and it can never be overthrown till the whole body of the English people shall have become so corrupt, or so cowardly, as to surrender to a faction, or to an oppressor, what the united sense of the people has established. Let us now contemplate this noble object in all its parts.

SECTION II.

Of the Supreme or Legislative authority of the English Government.

The *supreme* authority in England, as in all other countries, is the *legislative* power. Other authoritative functions in the state may be exercised by high magistrates acting altogether independently, and to whom entire discretion may be entrusted in respect of the acts of administration delegated, according to the rules of the Constitution, to be performed by them ; such as the administration of justice by the judges, and the making of war and peace by the King. But, still, such functionaries are not *absolutely supreme*—for this plain reason—because those who have the power of *making laws* can at any time interfere by regulating how, and according to what rules, they shall exercise their functions, and pronounce their judgments, for the future, and may even alter what such functionaries may have done. Nay, more—the legislative authority, having the power to make all or any laws, may, *practically*, even change the quality of the powers which, according to the fundamental rules of the constitution, are specifically entrusted to the exercise of particular functionaries under particular limits. To do that, indeed, would be (as I have said) to overthrow—as far as such legislative interference went—the constitution itself ; and, therefore, it never could be justified, except by the ascertained sense of the body of the people concurring. And this is a concurrence which in essential matters, as it must always be very difficult to ascertain, so is it both perilous, and perhaps hopeless, to attempt attaining. Still, as there is no practical, or actual limit (though certain constitutional rules

have been set) in the exercise of the power of making laws upon all and every subject-matter—it is this *legislative* authority and this only, which we must consider as *supreme.*

The legislative authority, according to the English Constitution, is reposed in a body composed of three separate organs, or agents, of political power. These are 1st, the *King* or *Queen*,* who acts with the advice, and generally through the persons, of his or her ministers, who are responsible for all the royal acts—2d, an assembly called the *House of Lords;* and 3rdly, an assembly called the *House of Commons.* The Queen has other powers, besides those in her *legislative* capacity, of which I shall have to speak. At present we will regard her as one of the component members of the supreme authority of the realm. The body, so composed of these three constituent authorities, is called *The Parliament.* The mode in which its actual and operative powers are exercised is by the passing of laws by their *united concurrence*—which laws are, accordingly, termed *Acts of Parliament.* Let us examine the quality and functions of each of these three authorities; first separately, and afterwards conjunctively.

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* As *a Queen* is at present the occupant of the English throne (which may she long continue) the royal authority will in the ensuing pages be designated by that title, or by that of "the Crown," "the Sovereign," "the Monarch."

SECTION III.

Of the Queen in her Legislative capacity.

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1. *The Queen.*—The Queen of England, exalted as her rank is—and revered as her person must be, not more as representing a long line of ancestors who have held the same eminent station, than from the vast national importance attached to the performance of her functions—holds her highest title to the affection and obedience of her subjects as being the *First Magistrate* in the kingdom. As such she has her *duties*, like all other magistrates, and the cares of royalty are bound up in the welfare and good government of her people, according to the principles of the Constitution. By the rules of that constitution, she succeeds to her station in virtue of her *birth*, and as an *hereditary* right; and not according to the varying decision of any course of *election* by the people. For historical experience has long proved to the conviction of the people of England, that a fixed regular appointed course of *succession* is the surest course of preserving the internal peace of the nation; and they have relied on the rules and limitations, under which they have established that the Monarch shall execute her great powers, for the protection of the general interests of the community in all her acts of state. They have relied on these appointed rules, rather than on any vain efforts to ascertain or secure the personal qualifications of their first magistrate, as the assurance of their government according to those principles of the constitution—and they have appointed institutions through which the Monarch himself is admonished of his own powers and the relative rights of the people. In a government so constituted it has been thought that no sufficient reason existed for excluding fe-

males from inheriting the crown; although their claims have been to a certain extent postponed in favour of a male succession. By the constitutional law of England the Sons, all of them according to priority of birth, and their descendants in a right line, succeed to the crown in the first instance: in default of any sons, or descendants of sons, the daughters and their descendants in like manner succeed, according to priority of their birth. And, whether a male or female sovereign reigns, they hold precisely the same powers.

As a member, and the Head of the Parliament, the Queen is entrusted with the authority of *summoning* that Body to meet for the purpose of consulting upon the affairs of the nation, and of passing laws from time to time as may appear requisite. And by the constitutional laws of England she is *bound* thus to call the Parliament together at least once in *three* years—and is enjoined so to summon this body once *every* year, if *need* be—which *need*, as it in fact necessarily does arise, the Parliament is summoned, in practice, to meet in the course of every passing year.

Each of these yearly meetings is called a *sessions* of the Parliament; and it rests with the Queen, according to her discretion, to put an end to each such session—which is an *adjournment* of the *sitting* of the *same* members of each respective assembly—until such time in the course of the ensuing year as the Queen may in thus adjourning fix for the meeting again. This adjournment is termed the *Proroguing* of Parliament, and the period of their separation is termed the *Recess*.

The same Parliament cannot meet at these several sessions for more than seven years successively. In the course of that period, and at any such time as the Queen in

her discretion may resolve, her Majesty must put an end to the *Parliament itself*, and not merely to the *sessions* of the Parliament: and if the Queen should fail so to put an end to the Parliament, it expires of itself by a sort of natural death. This ending of the Parliament by the monarch is called *dissolving* the Parliament. The effect of a *dissolution* of Parliament is, that the functions and authority of each member of the two legislative bodies altogether ends. Another appointment must be made of each of these members, according to the course provided by the scheme or constitution of the government, which will presently be explained; and the Queen, by her next summons of a meeting of Parliament, calls together, not a new *sessions*, but the first sessions of a *new Parliament*. Moreover the Parliament comes to an end by the death of the King or Queen—for it can only exist as a Parliament for six months thereafter, and may be dissolved at an earlier period by the successor to the Crown.

Upon the summoning together of the two Houses of Parliament for a *Sessions*, it is usual for the Queen to go herself personally in great state to the Parliament House to receive the members of them: although sometimes authority is given to one or more high functionaries to act for, and represent, the monarch on this occasion. Upon the arrival of the Sovereign she proceeds to her throne, or royal chair of state, and, the members of both houses being on that occasion assembled together in the room of the House of Lords, the Queen from her throne addresses the united body in a written speech. In that speech she usually alludes to the external condition of the country, with reference to foreign powers—its internal condition with reference to the public peace and quiet, and all matters of chief concern to the interests and prosperity of the nation—and to the various topics requiring the consideration of Parliament, as connected with the condition and prospects of the country, and with the measures

contemplated or in progress by the Queen acting through her ministers in the exercise of the powers entrusted to her (as hereafter explained) in the government of the country. This grand ceremony is called *the opening* of Parliament. After the delivery of her address the Queen retires, leaving the two houses, each in their separate assembly, to proceed to the business of the sessions, and who themselves adjourn their own meetings from day to day, until the whole session shall be closed by the *Prorogation*. In the conduct of the business of the two houses the monarch takes no part, save by sending a message occasionally through some one of his or her ministers who may happen to be a member of the house, recommending some particular subject to their consideration. The only further legislative duty and power confided to the monarch, as a constituent member and Head of the Parliament, is that of assenting or dissenting to the acts which are proposed or passed by the united houses; without which assent no proposed law can have validity.

It is impossible to contemplate this imposing spectacle of the *opening of the British Parliament* without a feeling of elevated veneration. The pomp of processions and the glitter of wealth, considered as a mere *show*, will but little affect the higher orders of mind. It is the *occasion* only that gives dignity to the scene. It is not the diadem on the Sovereign's brow. nor the robes with which the nobles of the land are clothed, which are the sources of rational admiration. But the thought arises that upon that brow rest the cares of an Empire, the mightiest on the earth—under those robes stand forth the great counsellors of this illustrious state, each of whom bears his share in the burthen of its government. They are met, as representing the united body of the governor and the governed, practically to renew by a formal example the great compact between the monarch and her subjects, under which the constitution is maintained, and the rights of the people and the glory

of the nation are to be preserved. We see standing amongst them the ablest statesmen, and the most powerful orators—we think of the vast human interests entrusted to their charge—and we know that on their voice will depend the well-being of millions, and the fate of nations. They are met, as the grandest and most potent assembly ever invested with authority over their fellow-men, to take part in the first solemn act of entering upon political duties, the influence of which will extend throughout the whole civilized globe.

SECTION IV.

Of the House of Lords.

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2. Let us next examine the quality and functions of the higher of these two assemblies—*the House of Lords.*

The Members of the House of Lords are such high dignitaries, who have been themselves, or whose ancestors (to whose rights and honors they have succeeded by course of *inheritance*) have been, raised to such eminent station by the grace and favor of the Sovereign. Those who, the *first* of their families, are thus raised to such high dignity, are presumed to be selected on account of conspicuous services rendered to the state in the course of public employments, or of pre-eminent talents and qualifications for the public service, and sometimes on account of that extensive influence among the people which great wealth, justly accumulated and liberally disbursed for the public good, naturally confers. All these individuals are termed *Lords of Parliament.* Among those who have been *themselves* thus selected, and whose rights and honors do not *descend* to their families, is a body of persons who, under the titles of *Arch Bishops and Bishops*, have confided to them by the Sovereign certain duties and authorities in support of religion—and who in virtue of such office are entitled to a seat in this house, with all the same legislative powers as the other Lords ; although they seldom take any active share in any other business of the legislature save that which is more or less connected with religious affairs. The other members of this house, whose honors and rights descend in course of inheritance, are termed *Peers ;* and are some-

times called *temporal* Lords, to distinguish them from the other religious Lords who are denominated *spiritual* Lords.

These *Peers*, or temporal Lords, although all *equal* in respect of their powers and privileges as members of one of the Houses of Parliament, hold different ranks and precedencies among one another, and before the public. Their rank (with the exception of such of the King's own family who may happen to be Peers, and who always rank highest, and of a few other instances of rank according to some particular offices in the state) depends on the quality of their *title*, called their *title of nobility*. The first or highest title is that of *Duke;* 2d. that of *Marquis;* 3d. that of *Earl;* 4th. that of *Viscount;* and 5th. that of *Baron*. But, it may here be noticed that the rank of an Archbishop is before all other Lords of Parliament except those of the royal family; and that the rank of a Bishop is next after that of Viscount.

It has been noticed that it is the King or Queen, acting by his or her mere grace and favor, who calls up from out of the body of the people such as he or she may think deserving to be advanced to the dignity of a Lord of Parliament. It must be obvious that to such high authority only can a power of this important nature (which must be personally delegated to *some* person or party) be entrusted. If a judgment is to be formed of the merits of a statesman, or public servant, that judgment should rather be formed by the most exalted personage of the state, whose labours in the duties of the government have been assisted by him, and who is the supreme magistrate over all classes, than by any party of men in the state, who, having no supreme authority in themselves over their fellow-subjects, but having necessarily objects of separate ambition or interest, would in all likelihood render such power of advancing others subservient to the private purposes of a faction.

Still, it may be thought, that the Queen herself, having such a discretionary power of creating members with a voice in state affairs, might have inducements to fill an assembly of this nature with her own creatures, pledged to execute her own will and designs, and thereby overbalance the co equal power entrusted by the constitution to the other house, and give a casting majority in the House of Lords itself. But, here, the principles and fundamental rules of that constitution would oppose a barrier. For all the nation could judge that these rules were broken and betrayed, were it apparent that Peers were plentifully created—not for any purpose of the general public service, or as an honorable reward for great national exploits—but merely with a view to particular favourite measures, or to aggrandize the power of the Sovereign. And while the body of the people have the means, through those who we shall presently see *represent* them in the other house, it can never be hoped that arbitrary and unconstitutional views of this nature can be indulged without soon meeting an effectual *check*.

In alluding to the mode of *dissolving* Parliaments, it was said that, after a dissolution of the Parliament, newly appointed members were called to the next Parliament summoned. And this is literally true with regard to the members of the House of *Commons*—but, as respects the members of the House of *Lords*, it is to be noticed that the Queen summons *each individual* member personally (as if he was then newly appointed) at every meeting of a new Parliament; which summons, however, cannot be refused to any Peer. The only actually *new persons*, therefore, summoned as Lords to any new Parliament called together, are, 1st, those who may have been newly appointed Spiritual Lords in the place of those deceased; 2dly, those who may have succeeded as *heirs* to Temporal Lords deceased; and 3dly, those who may have been newly created Peers by the grace and favor of the Crown.

The Lords are attended at their sittings by more or less, and sometimes (as the greatness of the occasion may suggest) by all the Supreme Judges, and by other functionaries of eminence in the law, for the purpose of assisting them with advice on legal points. But none of these legal dignitaries are *members* of the house, or have any right to vote ; nor have they any right to speak therein, except when called upon.

Each of the Lords may *delegate* any other Lord in his own absence to vote for him upon all or any questions discussed before the house. This may be thought, perhaps, to be somewhat an unreasonable privilege, inasmuch as it might appear like voting blindfold, and for mere party purposes, to decide questions of policy, without hearing the discussion of them. I will, however, only notice so much in explanation of a privilege the expediency of which has occasionally been canvassed, but has now for many ages been allowed to subsist as not having been found incompatible with propriety—that the Lords (as has been explained) are not liable to be *changed* at every new Parliament, and that each of them therefore *always* forms a component portion of the legislature. It is among the duties of his whole life and station always to be informed of the general policy and course of government of his country, and to become acquainted with the *principles* on which any particular class of ministers selected by the Crown conduct the affairs of the state. Indeed, most of the individual measures of the more important quality, and which usually occupy most time in debate, he may be presumed to have more or less previously considered. As, therefore, the Peer is not the representative of any other body, but himself, always intrusted with an actual share in conducting the affairs of government, and may be presumed to have studied the tendency of most of the measures under discussion, there is nothing so unreasonable, as might at first ap-

pear, in his exercising the influence of his vote, even on occasions when he may not be present personally to enforce his own opinions, and to listen to those of others.

Upon all questions debated in this House, each Peer has the privilege of entering upon the books of the public proceedings his dissent, and his reasons of dissent, to the measure proposed. And the only other distinguishing privilege of this House of Lords, which seems necessary to be noticed separately, is that of *solely* examining, discussing, and deciding on such of their rights as are supposed to exist already, and of *solely* originating any legislative measures which may affect their future rights, individually, as Lords of Parliament, or as a body composing this separate assembly. *These* Acts, or measures, may be rejected or assented to by the other house, but the latter has no power to change or *alter* them.

Such are the *Lords* of Parliament—a body as old as the independence of the national government, and the institution and existence of which is bound up with the prosperity and glory of the British nation. For the distinction of rank and honors is necessary in every well-governed state, as the reward of public services, and the appropriate incentive to great actions. Those who are actuated by a generous emulation for such distinction among their fellow-subjects can never be unmindful of the dictates of virtue and loyalty to the Sovereign and to the constitution. Those who succeed by inheritance to such honors, if they may not surpass or rival the glory of their ancestors, will scorn to disgrace their name. Holding their honors and their position in the state independently, they will feel an interest in protecting the constitution from invasion by any combinations of the Sovereign's ministers against the freedom or political rights of the people, or by any encroachment of the mass of the people upon the due authority of the Crown; since every advance towards new or arbitrary powers by the monarch, or towards

uncontrollable rule by the people, must tend to diminish or overwhelm their own influence. Removed by their wealth, or at least competency, from all those cares which the necessity of earning a livelihood imposes, they have the greater leisure, as well as the great er inclination, to dedicate themselves to the public service, and to all those departments of liberal education which may best fit them for the affairs of government. Nor is the grand test of national experience wanting to stamp the tried value of such an institution of dignified men, with their distinct assembly, distinct deliberations, and distinct powers. For often have the Peers of England proved the firm and successful champions of the people, against the Crown, itself for the attainment and maintenance of their best laws, and just political rights—and as often have they withstood the folly and fury of the people, whose factions would otherwise have utterly overthrown all government and all law.

SECTION V.

Of the House of Commons.

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3. Lastly, let us inquire into the quality of the third constituent part of the supreme legislative council of England—*the House of Commons.*

The members of this assembly are called the *Commons,* inasmuch as they are members of the *community* at large; not having any titles of dignity as *Peers* or *Lords* of Parliament, but chosen or delegated by certain qualified classes of the people to *represent* them especially among the rest of the community, and to act on their behalf.

We have seen that, after a certain number of *sessions* and *prorogations* of the Parliament composed of the two assemblies, that Parliament is at length *dissolved,* and a new Parliament is to be summoned. The *Lords* are summoned by a special letter directed by the authority of the Queen to each individual Lord. Let us see how the members of the House of Commons are summoned.

This is managed by a similar letter directed to certain officers, having the same name and executing similar duties to those performed by the *Sheriffs* in India. These Sheriffs are required to hold meetings in their several districts (called in England Counties, into one hundred and sixteen, of which the whole of the British territories of England, Wales, Scotland and Ireland are divided) for the election of one, two, and in some instances more, members for each such district; and they are likewise required to cause certain officers, or head authorities, in certain specified chief Cities and Towns in their several districts to hold like meetings for

the election of one, two, and sometimes more, members for each such city or town. The number of members, and the districts or cities or towns which at such meetings are to elect, are all expressly specified by the law. These members so elected are said to *represent* the places (or rather the people of the places) for which, and at which, they are elected—and are commonly called *The Members* for such places. The number of members for Counties is 252, that for Cities, Boroughs, and three Universities is 406. The whole amount of members is 658.

There are certain qualifications requisite to make persons eligible as members of the House of Commons—and they are these: 1st. The candidates must be of the age of 21 years. 2nd. They must be subjects born in some part of the Queen's dominions. 3rd. They must not be any of the Supreme Judges. 4th. They must not be persons dedicated to the administration of the national religion. 5th. They must not be any of the persons (such as sheriffs and others) appointed by law to manage the elections. 6th. They must not be persons connected with certain offices for the collection of taxes. 7th. They must not be persons enjoying any pension by the bounty of the Queen; and if any member takes an office of profit paid by the Crown, he must thereupon vacate his seat—but he may be re-elected. 8th. They must not have been convicted of any of the more serious crimes. 9th. They must (with certain few exceptions) have property in land to the value of 600£ per annum, to be eligible as members of *Counties*—and of 300£, to be eligible for any *City* or *Town*.

The qualifications for *Electors* of members are; 1st, that they should have a certain amount of interest in landed property—according to the nature of that interest. But the amount and nature of this interest vary so much, according to the ancient customs of the several districts and

places, that it would be tedious, in a general discourse of this quality, to detail all the differences and peculiarities of rights to elect, founded on this property. The obvious principle on which this qualification is required, is that *property* gives some assurance, not merely of *independence* in the exercise of this important right, but also of some cultivation of mind and knowledge of the world – qualities so much needed in the direction of a free and competent choice. But it is equally a constitutional principle that the right of electing should be extended to all classes of the people, as far as is consistent with that competency and independence; and, accordingly, the property qualification is reduced to a very low standard—the mere renting a house of the value of 10£ per annum being a sufficient qualification in some instances, or the owning land to the amount of 2£ per annum being sufficient in others, and the merely inhabiting any house as a tenant being sufficient in others.

In some few places the right depends on being enrolled as or members of some particular *trades;* and in two instances, those of the two *Universities* (as the great central institutions for the education of the superior orders are called) the qualification depends on advancement to a certain rank among the members of such Universities.

Further qualifications are—2nd. That the Electors shall be 21 years of age. 3rd. That they shall not have been convicted of any of the more serious crimes, or of that of perjury, or of having been bribed at any Election. 4th. That they shall only have one vote for each distinct property, or other qualifying right to vote.

Next is to be considered the *mode* of Election. This is settled by special laws, which contain a multitude of provisions directed to ensure, as far as human laws can, the unbiassed and uncorrupted exercise of a free choice by the Electors, according to their own discretion—to afford

full opportunity to all who have the right of Election for exercising that right—and for precluding false or erroneous claims to the exercise of it. With this view all military persons are to absent themselves from the place of Election, during the time of voting—all Lords of Parliament are forbidden to interfere, as are various other persons holding offices of influence. These precautions have reference to the exclusion of all undue bias or intimidation. But further and very strict provisions have been made to prevent bribery through the proffer of any gifts or offices of emolument. I have no occasion further to detail the nature of these provisions, being of so local an interest; but a feeling of regret is not to be disguised that the depravity of mankind is too often superior to the utmost legislative efforts to guard against influences of this nature.

On the days appointed for holding the Elections, the Sheriffs presiding at the meetings of their several Counties, and the other head functionaries presiding over those of the Cities and Towns, declare the purpose of each assembly. Thereupon any Elector proposes any person who happens to be a candidate, or whom he supposes willing to become so, which proposition is seconded by another Elector. The same course is pursued for each person nominated as a candidate. After such propositions of the several candidates the sense of the meeting is taken by the President calling for a show of hands. If no more candidates are proposed than the place has the right to elect, and if any number whatever vote by their show of hands for such candidates, they are thereupon at once declared duly elected, and the meeting closes. But, if there are more such candidates, the President judges from the show of hands which of them have the majority, and declares the election to have fallen upon such as have such majority. Upon this declaration every candidate, or proposer of a candidate, who is in the

minority, has the right to demand that the separate votes shall be taken of all the Electors, both present and absent, who may within the time prefixed for such purpose, come and proffer his vote. And this is a course, in fact, generally had recourse to, when a greater number are proposed than the place can elect—inasmuch as the casual attendance, personally, and show of hands at the meeting can give but little insight into the wishes of the whole body of Electors; and it may be presumed that each candidate who has any serious pretensions desires that the express opinion of the whole body should be declared. The proffering and recording of votes then proceeds—each Elector presenting himself openly in public for that purpose. If required, he must swear to his qualification, every precaution having in the meantime been taken by the course pointed out by law of registering and ascertaining his right of voting. The President of the meeting presides also from day to day at the taking of the votes, assisted by such advisers as he may think fit, and he has the original power (subject to subsequent appeal) of admitting or rejecting the votes offered, according to the nature of any objections raised. At the end of the time prefixed by law for receiving votes, the numbers voting for each candidate are ascertained, and, according to the majority, the members are declared to be duly elected.

The Sheriffs, after receiving these reports from the presiding officers of the Cities, and Towns within their Counties, send them, together with the reports of the result of the Elections in their several Counties, to the appointed government office. These reports are termed their *Returns.*—Upon the next meeting of Parliament any candidate may petition the House of Commons to examine and decide on the legal validity of any *return*, and for the return being amended by his own name being inserted instead of that of any other candidate. A delegated number of the

members are thereupon appointed for this purpose,—and their determination finally adjudges the right of sitting as a member.

Thus it is that the people of England (among whom I include those of Scotland and Ireland) have and exercise their *share* in the supreme government. Those whom the Electors of each place shall choose do not, indeed, represent those Electors *only*—although by the very act of such choosing each of these bodies of Electors expressly participate in some degree in the government. But each member of the Commons' house of Parliament acts for, and represents, the *whole body* of the people. He does not go to Parliament as a *delegate* or *agent*, merely, to submit, and act upon, the instructions of those who elect him. If it were so, it would be plainly requisite that the body who send him should themselves, not only be competent, but have the means of discussing and determining previously all measures and laws which Parliament is to pass. This discussion, however, as well as the determining, is not entrusted to the Electors, but to the Parliament. That assembly is the deliberative organ of the whole nation. Those who go there, therefore, ought to bring their own judgment, to bear on proposed laws; and not the instructions of those who have not entrusted to them the power or the means of deciding on political measures. It would be a strange absurdity that members of the national legislature should meet and discuss questions which others, who have not discussed them, have previously decided and given their orders upon. The opinions come to by the Electors, who for the most part are of the middle and inferior classes of the industrious—formed without any regular debate, often taken up without personal inquiry, and oftener without due information and reflection—are not only liable to change, but are peculiarly exposed to delusion and error. He, therefore, that should on all occasions blindly pursue the dictates of such instructors would generally be-

tray, rather than serve, the interests of those who had, chosen him for a legislator. Besides this, it is to be recollected that, in the government of such a vast and various empire as composes the whole British nation, the legislature is called on to deliberate and decide on a mass of interests so numerous and so intricate, that very few of them indeed can have ever become the subject of consideration in each place which elects a member for Parliament.

But, still, in the general public conduct of the Representative elected, and in many of the more important measures on which he is called on to pronounce his sentiments or his vote, there is, and ever must be, a close union and correspondence between the member and his constituents. And, besides that, the local interests of each place, which are sometimes (and especially in large districts or commercial cities) of national importance, also require an especial organ in the grand assembly of the legislature. It is this tie between the electors and the elected, and this special duty imposed on the former by the latter on their own local behalf which renders the whole body of the House of Commons the true Representatives of the whole body of the people, who thereby exercise a practical influence, not only in the formation, but also in the measures, of the government. No doubt the electors have, and generally use also, the right of calling on their Representatives from time to time for a full explanation of all their political sentiments and acts—and the electors have the means of meeting and comparing, for their general guidance, their own common feelings in regard to those measures in which their Representatives have taken their part. The expression of such common feelings must ever be entitled to respect, and will assuredly have its weight. And, with this view, our admirable constitution provides that once in seven years, at least, all the electors in the empire shall necessarily have this opportunity of sanctioning or repudiating the proceedings of their Representatives, through the course of

re-electing them, or by their rejection in favor of other candidates. Thus it is that, by possessing these sure and ample means of uniting their wishes and sentiments with those of their Representatives in all their political acts, the people are enabled to identify their own interests with those of the individuals who form one, and the greatest, of the organs of the Supreme Government of the nation, and thereby to exercise in a substantial sense their *share* in such government. While their voice can thus be at all times plainly and clearly heard, and while that influence which must ever attend the expression of that general voice shall be exerted, as a component portion of the will of government itself, it is certain that neither the arbitrary power of one, nor of a few, nor of any portion whatever, among the people can arise to overthrow the common interests, and establish the reign of misgovernment, terror, and injustice.

This system, moreover, of Representation, such as I have endeavoured to explain it, is intended (as far as human foresight, and the experience of past ages can accomplish it) to comprise substantially the *whole body* of the people. It is obvious, if we look at the aim and principle of *election*, that, as regards those who ought to exercise this right, we can only take into our consideration such as are competent to it in point of *understanding* and *independence*. A large portion of the people must, consequently, be struck out of the number of Electors, as either not fit to be represented, or represented by identification with others. Thus Children and those who are utterly ignorant and destitute, (to say nothing of criminals) can hardly be expected to become Electors. Thus, also, our constitutional law, having reference to domestic ties and to the general dependence of all females in every station of life, excludes them from such privilege. But, besides these, there is a very large class of the community so entirely dependent on the inclination or power of others, in regard to their interests—or who, from

their very low pecuniary circumstances, may be made so, that to give such parties the right of Election would in effect be no more than unduly to increase the votes of the wealthier classes. No political subject whatever has occasioned more heats or controversy in England than this of the *proper extent* of the right of Election. It has generally been supposed that by late Acts of Parliament this right has been extended up to the very verge of expediency—and many consider far beyond it. The lovers of peace now trust that agitations on this topic may cease: and it surely may be some reason in the minds of the well-disposed for such cessation, that to all classes of the male population is this right open to attainment, by mere freedom from crime, and by the acquisition of the most slender pecuniary stake in the country.

Having now enquired into the *mode* of *Election* of the members of the House of Commons, and examined into the nature and operation of that *Share* which the whole people of England have thereby in the government of their country, it remains but to say that this house has the sole authority to discuss and decide questions affecting their own existing rights, or to *originate* legislative measures affecting their own future rights, either individually or as a body, and to notice one other important particular, as distinguishing the functions of this House from those of the House of Lords. It is a privilege of the people of England that they cannot be taxed for any public purposes of government except by their own consent, expressed through their legitimate organ the House of Commons, *with whom alone* any act for taxation, or any grant of the public funds, can *originate*. This privilege is the very corner-stone of that structure of government whose foundation is the duly ascertained sense of the people. As it is a necessary principle of every form of government that the support of its charges shall fall upon the industry of the people, so is it a principle

of the British constitution that the people themselves shall through their Representatives guard the supply from the demands of those other powers of the state, who, having private interests of their own apart from those of the people at large, might be influenced to increase the public burdens for their own objects. At the same time, although it would prove a factious violation of the constitutional law to refuse those supplies which are evidently necessary for the purposes of government, or at all events to refuse them except in self-defence against palpable violations of that law by those entrusted with the administration of government, yet this exclusive power over the finances of the country furnishes to the people's branch of the legislature another absolute check against the encroachments of arbitrary authority, should any monarch or his ministers be so rash as to attempt them.

It may readily be presumed that, next to the Lords themselves, the members of the House of Commons are among the most eminent men of the nation. Large wealth will undoubtedly in itself clothe the possessors with that influence which would go far towards ensuring an election to this august body. But it is seldom that the mere possession of riches is the main qualification of such as gain that station. The people naturally look to their Representatives taking more or less share in the public business of the assembly: it is very certain that no part can be efficiently taken without some talents, and much information. But those who aspire to distinction in an assembly like this will know that such an ambition would be vain and hopeless to any but such as possess surpassing abilities, qualifying them to conduct or advocate the vast and various interests of an Empire on which the sun never sets. It is in this assembly, therefore, that have shone forth, and still flourish, those great men whose fame fills the whole earth. It is among the debates of this body that we must look for the examples

of that eloquence, which, while it convinces, delights, or amazes, fixes for ever the prosperity of nations. From this assembly we are to trace the many grand measures and laws which are the glory of the English nation and the admiration of the world. In this nursery have been fostered statesmen who have become the lights of political government, and by whose genius Empires have been raised or overwhelmed.

Constituted as this assembly is, it must always have the chief influence in the state. For, being the organ of the whole body of the people, and being through its members individually in continual correspondence with the people, the permanent and decided expression of its sentiments can hardly be resisted. In the conduct of the legislative business, and in the passing of Acts, though all these branches of this legislature must concur, yet they each act distinctly, and each House proposes and discusses separately. The measures originated by the Lords, however wise they may be, yet, as exemplifying the sense of only a very small though important portion of the people, they will hardly be pressed against the united conviction of the people themselves as manifested in their own House. This former body, will, therefore, watch and seek to instruct, rather than to force, the general sense of the people in the political projects they themselves introduce. And in the consideration, also, by the Lords of the measures proposed to them by the Commons, their great constitutional service in the state will be best evinced by the wholesome check which their discussions, as well as their power, will impose on hasty and ill-considered legislation, and by the sagacious and discreet improvements they will make in the laws submitted to them. The Sovereign, in the mean while, possesses in the power of Dissolution the means of personal appeal to the people, upon all great political questions about which the two great Councils of the nation may differ. But, when this House of Lords shall have

learnt the incontestible sentiments of the united people and their steady perseverance in them, or when the monarch shall have been thus instructed in relation to the steps that should be taken in the administration of his government, or in the choice of his ministers appointed to conduct it, there can be few cases, indeed, in which a continued resistance to those expressed sentiments would be justifiable, and fewer still in which such resistance would be prudent. Such cases of justifiable resistance may arise—our constitution supposes the possibility of them. But we should rather lament than contemplate that possibility of their occurrence, in the apprehension that they would be cases when a large majority of the whole people should aim at overturning the system itself of the government, and its constitutional rules.

SECTION VI.

Of the mode of enacting Laws, or Statutes.

Let us now turn our attention to the proceedings of the whole legislative body conjunctively—in other words to the *mode* of passing *Acts*, and to the quality of other business of the Parliament, in the conduct of which each house observes substantially the same course.

With a view to the better and more independent performance of these great duties on behalf of their country, the members of both Houses of Parliament are exempt from any *arrest* of their *persons* by the legal process of any Courts of Justice, except for *crimes*. But a more important and necessary privilege enjoyed by the members, for the same end, is that of entire *freedom of speech*, subject only to the rules of each house for the preservation of regularity and decorum. No magistrate and no functionary in the kingdom is so high, but that his conduct may be examined and censured in these assemblies—no measures in the administration of government, by whomsoever advocated or effected, are free from attack and exposure. However mistaken the censurer may be, either as to facts or opinions, he is not to be questioned for the statement of his sentiments—for, great as may be the inconveniences from occasional publicity given to prejudice and error, they are as nothing when compared with the ill consequences of any hindrance to a fearless discharge of duty to the state. For the better government, however, of the business and debates of Parliament, each house has its President, whose prominent duty it is to enforce those rules of the Houses which have been

framed for ensuring propriety in debate, and due order in the conduct of business; and whose word upon such subjects is the law.

The Statutes, or Acts of Parliament, are *laws:* and, like all other proceedings of the House, must be passed through all its stages by a majority. When a new law is to be proposed, the member desiring to propose it must first move for and *obtain leave* from the House to *bring* in, or exhibit to be read, such law. Upon the motion being made, it must be *seconded* by another member—and then every member is at liberty to state his sentiments upon the motion. Upon the debate concluded, the president (who in the House of Commons is a member elected among themselves, and called the *Speaker*, and in the House of Lords is the highest judge in the realm, called the Lord Chancellor) puts the question. The votes are given openly by voice; and the majority of those then assembled on the question being put decide it by assenting or dissenting. It is seldom, however, that any debate arises on this preliminary question of asking leave to bring in a law; and leave is not often refused.

The bringing in the law, which until finally passed is called *a Bill*, is by delivering it, at the proper time after leave given, into the hands of an officer in the House, while sitting, and then moving that it be *read* a first time. This motion must be seconded; and the same course is pursued in deciding upon that motion, as before in asking leave to bring the Bill in. It is seldom that any serious debate or opposition arises to this *first reading*.

At a competent time the member again moves that the Bill be read a second time. And it is upon this motion that, according to the nature and importance of the law, a debate (if there be any opposition intended) arises. If the Bill is allowed by a majority to be read a second time, the

next course is to refer it to the examination of a Committee, who discuss the Bill, clause by clause, with a view to any amendments which may appear requisite in the details ; all which amendments, on being proposed, are carried or rejected by a majority. After it has thus passed through a Committee it is moved to be read a third time—which though occasionally, and especially in very important matters, opposed, is usually allowed without debate. Finally, the President puts the question whether the Bill shall now *pass*—which may in like manner be opposed, but very seldom is so. The Bill has now gone through all the forms and discussions required in the House where it originates, and is thereupon taken and delivered into the hands of an officer of the other House. Some member of that House must there propose it to be read in his own House; otherwise the Bill drops altogether—but if any member shall so take up the Bill, the same course must be pursued in having it read and debated three several times, as has been before pursued in the other House. Whatever alterations are made, the Bill must be returned to the House wherein it originated for its concurrence, without which the bill must either be allowed to pass without the alterations, or else it must be dropped altogether. And, it is to be observed, that a Bill once rejected cannot be brought forward again during the same sessions.

The Bill having passed in this way through both Houses is finally presented to the Queen, or some person authorized to represent her on the occasion, for her assent. For the reasons already alluded to, an instance has not happened for near two hundred years of the refusal of the Royal assent to a bill thus brought forward by both Houses of Parliament. The Bill then becomes an Act of Parliament, sometimes called a *Statute*, and becomes part of the imperative sure law of the land.

It is worthy to be observed with how many precautions, and with what provisions for ample consideration and discussion, the constitution has guarded the enactment of the national laws. It is not to be expected that any Bill would be introduced to the notice of such an assembly as the Parliament without mature reflection on the principles of the projected law, and without an accurate scrutiny even of its very language. The opportunities for debate are such as to preclude all hasty and unadvised decisions by those to whom the laws are submitted for sanction. At the same time the necessity of passing every law by the same course through both Houses, acting independently, renders each assembly a check upon the exorbitancies of the other; and, thus, each branch of the legislature is said to support and be supported, to regulate and be regulated, by the other.

Such is the method of passing Acts of Parliament, which are the Statutes, and form a large portion of the laws of the English Empire; and by such course it was that, after the examination of many volumes of evidence delivered before the two Houses, the last great Charter Act for the government of India was enacted. But there are many other important political functions performed by the Houses of Parliament, the chief of which should be enumerated before we pass to the consideration of the *administrative* branch of the English government.

Among these functions one is, to receive petitions from any recognized portion of the people, or even from any individual, which petitions have for their object any public measures for the relief, or for the benefit of the petitioners, and which relief or benefit may not happen to be within the ordinary compass of the existing laws. Another is, that of passing resolutions upon the quality of any public measures, or the conduct of any public men, or on other topics, directed to the support, or introduction, or amendment of proceed-

ings connected with the administrative government of the country. Another is, that of passing addresses to the Sovereign upon the same or similar topics. And, lastly, I shall notice that momentous power vested in the Common's House, of bringing charges to be tried before the Lords of Parliament, sitting on such occasions as the highest judicial court of the whole Empire, against any individuals for such high crimes against the state, or the constitutional liberties or rights of the people, as the ordinary laws of the country cannot reach. Thus all acts of oppression in the conduct of any branch of the government by great officers of the state, all attempts by them to subvert the fundamental rules of the constitution, are subjects of these charges brought by the body of the people themselves, through their Representatives, against such powerful delinquents. This formidable power, against which not the mightiest Minister of state can prevail, affords the last of those efficient securities which I have had to enumerate for the maintenance of English constitution, and for the protection of all the subjects of the British Empire from arbitrary and tyrannical government.

All these various topics of debate form the copious subjects of those *Reports* of Parliamentary proceedings with which the English newspapers during the Sessions of Parliament are for the most part filled. It is beside my present object to explain the nature and effects of that liberty of writing and printing whatever each man thinks proper, subject only to responsibility to the Courts of Justice for any injury to the public, or to any private individual, thereby, which among the Natives of this country, as well as in England, is commonly known by the terms of *Liberty of the Press*. I notice it now, merely for the sake of shewing its operation in diffusing far and wide over the whole civilized earth, and among all classes, a full and accurate account of whatever any member of Parliament utters in that assembly of the slightest importance in a public point of view. The art of noting

from the mouth of a public speaker the purport of his speeches is one of considerable skill, and the arrangements for a speedy publication of such notes are curious and extensive. But to such perfection has the method been brought in England that, within a very few hours after each individual has delivered his speech, or even an observation, and after the debate has closed, the whole purport of the discussion, with all its peculiarities and interruptions, and in many instances incorporating the very words themselves of the speakers, is presented to the reader of the English newspaper. By this means, not only is an enlightened curiosity gratified, but an exact knowledge is continually gained of the conduct and sentiments of every member of the government, and of every public measure in contemplation. The body of the people thereby become themselves the guardians of their own political rights and interests.

SECTION VII.

Of the Executive Branch of the English Government.

We will now direct our attention to another, and not less important, branch of the English political government, as settled to be conducted by the rules of the constitution, which is the *Administrative* government, or the Queen's government—and usually termed the *Executive* government.

It must be obvious that but a small part of government consists of making laws—for the greater *practical* business of government is that of carrying on its affairs according to those laws, and the rules of the constitution.

This Administrative, or *Executive,* department of government is entrusted to the discretion of the Queen—or, as I shall choose to denominate the power personally resting in the monarch who may be either King or Queen, the *Crown.* That discretion is no otherwise limited than by the requisite observance of the laws actually existing, and the legislative authority of the Parliament. But, to understand correctly the nature and the limits of that discretion, we must examine in detail the powers of the Crown; known in England by the term its *Prerogatives.*

The first I shall notice is that of the Crown's *personal independence* of all other jurisdictions. As it is said in the terms of the English law—*the King can do no wrong.* This, it is true, is a mere notion, or doctrine, or supposition. The wearer of the Crown may commit error ; may

even betray the trusts reposed—but it is a principle of the constitutional law not to suppose it, and therefore on no account personally to charge it. In the *Executive* department the Crown is personally supreme; in the *Legislative* it is a component portion of the uncontrollable supreme authority of the whole Empire. No tribunal, therefore, can have superiority over the monarch personally. The rules of the constitution provide that every thing shall be presumed to have been done by the Crown through the advice of her Ministers —and accordingly they, and they only, are held responsible for all her measures. This doctrine of the responsibility of the Ministers for all acts of the Crown, while it imposes no injustice whatever on those Ministers who can always refuse their assent, or ask their dismissal from office, on occasions when they disapprove of the proposed measures of the Crown, provides a sure remedy against those abuses which evil counsellors or agents of the Crown might attempt under its sanction. But though the exalted quality of the monarch exempts her *personally* from any human tribunal, yet, such is the system and frame of the constitution, that any positive efforts (which the law in decency will not even suppose) through her chosen agents to subvert the rules and the rights of the people, would at least meet with effectual opposition, and endanger the enjoyment of that regal capacity, which in truth by such a course of conduct would have been abandoned. The monarch has her *duty* and *obligations*, like other inferior functionaries of the state, which main duty is, *to govern according to law.*

In the exercise of the Sovereign's vast powers for the public good, according to her mere discretion through her responsible ministers, we must, therefore, look to those matters in which the positive laws of the state, and the acknowledged rules of the constitution are altogether silent. The next Prerogative power, then, which we will notice, as entrusted to the Crown's discretion is, Secondly, that the monarch

shall act as the sole *representative of the people* in all matters in the relation of the British Empire *with foreign independent powers.*

Thus, the Crown has sole authority of declaring war or peace with foreign nations, and of carrying on with that despatch, decision, and consistency which is obviously necessary (but which a numerous community or body of counsellors could never so well accomplish) the important and complicated concerns attending on the waging of wars, or the maintenance of peace. It is the Crown which appoints all Ambassadors, and makes all treaties with foreign states. It is the same authority which allows, or prohibits, the access or residence of foreigners within the British territories. It is the Sovereign who raises, and who is the supreme head over all the Military and Naval forces, and the governor over all Forts, and over all havens and ports of the sea.

Thirdly, should be mentioned, the royal Prerogative of assenting to, or dissenting from, Bills of Parliament; which, having been alluded to before, is only repeated now as explaining that, in whatever cases (as in the instance of the Government of India) any prerogatives of the Crown are *delegated* to subordinate governors, the Queen does in effect exercise her own Prerogative by herself *voluntarily conceding*, in her capacity of head of the Parliament, such powers, to be applied according to the specified arrangements provided by the Act or Statute.

Fourthly, the Crown is the source, or fountain, and the general distributor, *of justice* throughout the Empire. It is not to be supposed that justice flows from the royal mind as having its origin there. *The law* is the true origin and source of justice; the Sovereign is rather the *reservoir*, and the supreme *administrator* of justice. And in early times the King himself personally sat as the supreme judge in all

causes—but such a course is quite incompatible with the condition of civilized countries, and with a state of things when accurate certainty and extensive learning becomes necessary for right adjudication according to the laws. It has, consequently, become a principle in the English constitution that the King shall administer justice *through appointed Judges.*

The Queen, therefore, alone has the power of erecting all Courts of Judicature—as in India the King originally did, until the whole course of the India Government became settled *by Statute.* The Crown still, however, exercises that authority in erecting the *Supreme Courts of* Judicature in India, and appoints the Judges of those Courts. It is under this Prerogative we must class the sole power of pardoning criminals—a power often delegated to the governors of Colonies, as to a very considerable extent it is entrusted to the Governments of India; but which is still reserved to the Crown as regards all criminals convicted before the Supreme Court. Before quitting this subject, I should notice that no portion of the constitutional law is more strictly guarded than that which is directed to ensure the independence of the Judges. The fearless discharge of their duty, unawed and unbiassed by the Crown or the ministers of Government, is considered of far more importance than even their freedom from error or ignorance. For it is ever the dearest privilege of Englishmen that they shall be under the dominion of *the law,* and not of any man's will, or wishes, or inclinations. It is, therefore, so provided, that nothing short of the *Parliament itself,* can interfere, upon clear cause shewn, for the displacing a Supreme Judge in England—and great, though by no means so extensive, precautions of a similar kind surround the character and independence of the Supreme Judges even of the distant Colonies.

Fifthly, the Sovereign is the true fountain of *honor* and *office.* Her sole authority of making Lords of Parliament has already been explained. But there are many other gradations of rank, and of titles, and of personal distinctions, known in England. Thus *Lords* who are not Lords of Parliament may, and sometimes are, created by the Crown. Thus, likewise, the people of India are familiar with other distinguishing titles in the Army and Civil Service, such as persons bearing the title of *Right Honorable,* and *Honorable, Baronets,* and *Knights* of various classes. So also, the holding of *offices* under the state is, in itself, a species of distinction and honor; and all such offices spring originally from the Crown. For instance, in England, all Justices of the peace are so appointed by the Queen herself —and it is only by authority of an Act of Parliament that this appointment of Justices of the peace is made by the Governments of India. In like manner all Commissions, and Ranks in the Army and Navy are held from the Crown; although those in the East India Company's Army and Navy are given by the *Directors* of that Company by authority of statutes.

Sixthly, the Sovereign is the supreme *Governor and arbiter in the affairs of Commerce.* As regards *foreign* trade the Crown can, indeed, by this Prerogative interfere but little—inasmuch as independent states will not be controlled by the authority of other states. Neither can the Crown legally dictate or regulate the terms of such trade, beyond such matters as concern the portion of that trade necessarily conducted within her own dominions. Moreover, all such regulations of foreign trade, as well as that which is carried on between England and the Queen's own foreign dominions, have been provided, upon a just observance of the infinite number of commercial interests, by Acts of Parliament—as, particularly, the trade between England and the eastern countries; which, however, *originally* was

regulated by the authority of the Crown alone. But, as regards the domestic or *internal* commerce of England itself, various exercises of Prerogative still prevail, such as the erection of any new public markets—the regulation of fixed weights and measures—and, what is the most material of all, the sole right of coining money, of whatever denominations or declared value, but which must be of either gold, silver, or copper. I will not expatiate upon so extensive a subject as the nature and use of *current money*—which nature and uses, rightly understood, must necessarily govern this exercise of the royal Prerogative. It will be sufficient to say that this royal authority is not of that mere discretionary or arbitrary nature, as that the pecuniary concerns of the people can be exposed to confusion or ruin thereby. It is a power, which, as it must for the sake of certainty and regularity in such concerns be reposed somewhere, is reposed in the Crown under settled limits calculated to preserve the integrity of all pecuniary dealings between man and man.

Lastly, the Sovereign, is the supreme *Governor over the affairs of Religion.* This does not imply that the Crown can dictate the religious Faith, or the modes of Worship, among her subjects. That is left to their own consciences and convictions. It cannot be properly made the subject *of force.* But, in England, there are rules or doctrines of religious Faith, as regards the nature of the Deity, and the disclosure by him to mankind of his will in respect of their conduct towards him and towards their fellow-creatures, which have been received as sacred truths by the governing power of the state, and are consequently maintained by its authority. In this sense, the Queen, as the Chief Magistrate of the state, is the head and chief governor in matters of religion. It is she that appoints the functionaries of the Church, and all priestly magistrates having authority in the conduct of the national worship. Thus, she not only ap-

points all Bishops in England, but also the Bishops in India, and in all other parts of the British dominions. Other religions are not only permitted, but they are under the law protected—so that every man may worship God according to his own form of Faith in peace and security.

By the English law all *charities* are considered as founded in religion, and consequently they fall within the Sovereign's protective Prerogative. The Queen has the governance and control over all charitable foundations and gifts, under whatever form of Faith, or for whatever humane purposes dedicated. This, is a necessary consequence of the Sovereign's possessing the chief administrative power; as, otherwise, this property would have no specific owner—which is obviously requisite for insuring the just objects of all charitable dispositions. For if the royal authority was not interposed through her appointed officers for the protection of such Institutions against fraud and spoliation, what hope could there be for the maintenance and prosperity of any of these public establishments, whether for education, or relief to the sick or destitute? For the objects of such institutions are too weak to befriend themselves.

Thus, it will be seen, that the royal authority ranges over the whole compass of the administration of government—and is the supreme *Executive* power of the State. Supreme in one sense, because there is no superior authority from which orders in the *Administrative* department can flow, nor any to which appeal can be made for the control of those measures entrusted to the discretion of the Crown. But, still, this discretion and these powers are not altogether *arbitrary and absolute;* but are to be guided by certain references and principles. The Queen must govern *according to the laws*—the monarchy is said to be "a *limited* monarchy"—limited by the rules of the constitution, and by the

express laws made by the supreme legislative authority of the Empire. What negociations shall be made with foreign powers—whether war or peace shall prevail—what armies shall be raised, and who shall bear command in them—what courts of law shall be established, and who shall preside in them—how to maintain the national religion and whom to appoint its ministers—and such like prerogatives, are all within the sole consideration of the Crown. But, to deliver up the national independence to foreign powers—to make war for private objects of ambition—to cover the land with standing armies, and compel the people to serve in them—to erect courts with unusual judicial powers, and to dictate the law, or how that law shall be administered—to change the national religion, or to attempt force upon the conscience in matters of Faith—are all beyond the power of the monarch herself. And the law of the constitution has appointed a course of calling in question those acts of the Crown which violate the rules of that constitution, or are wickedly directed against the private rights or political liberties of the people. For, although the person of the King or Queen's majesty is sacred from all human visitation—yet the *Ministers* of that Crown are answerable to the people, through the Parliament, for all the measures emanating from the royal authority. The Queen, therefore, governs through her Ministers.

In the choice of these Ministers the Queen's sole discretion is supreme. Influenced indeed in all cases, and even governed in some extremities, that discretion must ever be by the united voice of Parliament. For that is an authority, which under a judicial course of procedure may condemn that Minister who may have betrayed his country's interests to death itself—and no royal inclinations can withstand the opposition of a whole people against the disastrous measures of a weak or wilful ministry. But, according to the ordinary course of administering the government, it is within the

Queen's breast to select those in whom to repose her confidence, and with whom to consult in the exercise of the powers of her Prerogative. Thus, one high functionary of state is placed over the affairs of the nation with foreign countries —another over the affairs of the law—another over those of the colonies—another specially over the affairs of India—and so on. Over the whole body of Ministers one is selected as the more immediate organ of the Crown, and is termed the *Prime Minister*, by whose name the particular administrations of government during the time of his presiding is usually distinguished.

Limited as the powers of the Crown are, the limitations are of a character rather to exalt, than to lower, the true dignity of the monarch. The real rank and dignity of a monarch must be estimated, not so much by the extent of his dominions and the obedience he can enforce, as by the independence of those dominions of all influence or control from foreign states—by the wealth and resources of his people by their love towards the Sovereign's person—and by their quality and advancement among the civilized nations of the earth. Judged by all, or any, of these standards, where shall we find a monarch who can surpass, or even rival, the Queen of England? It is not on the splendour of her palaces and domestic court that the Englishman loves to dwell in upholding the personal honor of his Queen—it is in pointing at the glory of that nation which she has been called to govern—its great deeds, and great men—its abounding and industrious population—its wealth and security—the many, the immense, and the distant countries under her sway—and the proud feelings which inspire this mighty people to preserve their renowned station among states even against the world in arms. It can never impair the true dignity and honor of a monarch over such a people, that its assigned powers are united with duties; and that they are bound by rules

founded on the experience of ages, as best calculated to ensure the national prosperity against human error or caprice.

By the dispensation of Providence these wide countries of India have been brought under the sway of this great Empire—and the dictates of its government, the principles of which I have endeavoured to unfold, all who live in this land equally obey. For the Natives of this country, and the English and others who find in it a home, are all *equal in the sight of the law.* To all of us the same protection is due, and by all the same rights may be claimed. The sole difference lies in our various qualifications; and arises from the exercise of that sound discretion and judgment which the local governments of this country—guided and controlled as they are under provisions made by the superior authority of our common Government of England—are bound to exercise for the political and general benefit of all.

But these considerations lead me to a new, and perhaps a more interesting, subject.

DISCOURSE III.

Of the East India Company.

INTRODUCTORY Observations. Of the meaning of the word "Company;" and of the Nature and Objects of such an Association. Of the Origin and Formation of the East India Company. Of the Progress of the East India Company, until they became a Political Power. Survey of the Political Progress and Condition of the Native States of India, previous to the Conquests of the East India Company. Of the Progressive Conquests of European Nations in India, and the Effects. Of the Means and Resources of the East India Company for the Conquest of India. Of the Component Members of the East India Company: the Proprietors of Stock.

DISCOURSE III.

Of the East India Company.

SECTION I.

Introductory Observations.

IT was about the year 1590 of the Christian era that a few merchants, travelling from Aleppo on the coast of the Mediterranean Sea, down the Tigris to Bagdat, and sailing from the mouth of that river across the Persian Gulf to Goa, planted the first English footsteps on the shores of India. They traced their way from Goa northward to the cities of Agra and of Lahore. They thence traversed the fertile plains of Bengal. Embarking again at the mouths of the Ganges, they gradually compassed the whole circuit of India; and, finally, retracing their course across the Persian Gulf, and thence by the Tigris and the Mediterranean Sea, they returned to their native country.

These venturous men, weak strangers in a foreign land, passed from city to city over the dominions of various powerful rulers governing under the supreme authority of one great Potentate. They depended for safety and protection on the mere curiosity of the people around them, and on the consideration yielded to the humble insignificancy of their character. They were the first to give an account to their countrymen of the existence of an Empire which, as regards natural wealth and resources, was one of the most magnificent on the face of the earth; and which contained a population outnumbering by ten times the whole of the people at that time under the British sway.

Within two centuries and a half from that period this vast Empire has been totally overthrown; and all the extensive dominions subjected to its authority have become consolidated anew, under the rule of a nation separated from them by fifteen thousand miles of ocean. It has been subdued by a body of Englishmen whose political power and means were of little consideration, compared with those of the other governing authorities of England. They have achieved this conquest with less than one-twentieth part of the military strength of a Nation whose whole territory was no larger than an Indian Province. State after state has been reduced under the government of their servants. At length the supreme power of the great Mussulman Chief over all, whose armies had from age to age spread desolation throughout the ancient Hindoo Governments, and established the despotism of many foreign masters in their place, was destined to give way to English domination. The wide regions enclosed by the Himmalaya Mountains on the north, the Berhampootra on the east, the Punjab on the west and by the wide ocean reaching round from the Indus to the Ganges—including a hundred ancient nations—has finally become an united portion of the great British Empire.

So firmly is the English Government established through its well regulated plan of power, that the evils of internal war and devastation have long ceased; and all commotions attempted to be raised have become plainly desperate. With so much wisdom and foresight have the resources of national strength been called forth and organized, that surrounding nations stand in awe of that might they can never hope to match, and which is competent to defy and to repel the whole world in arms. So regular and settled is the administration of the government and the laws, that the people enjoy a peaceful security hitherto unknown since the time of its history, and have made advances in national prosperity which no former government has ever witnessed.

The course of events which has effected this stupendous change is the wonder and admiration of the world. Few but must have some curiosity to learn the origin and progress of transactions such as these. Some, however, are content to read of the battles, sieges, marches, and all the vicissitudes of warfare—the politic devices, and the turns of fortune—through which Princes have been deposed, and countries won; without casting much thought on the creation and quality of those original powers out of which the means arose of attempting these grand objects, or through which they were actually accomplished. Others, and for the most part the Native community of India, who have as yet so little access to that genuine history and information on these topics which must naturally interest the great bulk of the people, are constrained to attribute these events to some incomprehensible but all-powerful political body, of which they know no more than its designation of "the Company." Their minds are utterly puzzled to account for its resources and authority—they do but know that, under whatever reverses, their means have ever appeared to be unexhausted, and they settle to the conviction that their power is irresistible. Others, again, can with difficulty believe that any other cause than mere delusion and accumulated mischances could have occasioned the overthrow of so many kingdoms, and so great an Empire. They cling to the notion that common energy on the part of the people would have prevented all conquests heretofore, and that some union of efforts might still raise the fallen powers into existence again. They indulge a false estimate of past times—and most erroneously suppose that greater peace, and tranquillity, and plenty, prevailed under ancient governments; and would so prevail again, should some general insurrection succeed in restoring them.

It will be my business in the ensuing pages, to explain what that body called "The East India Company" really is—

how it originated—what is the quality of its constitution—and according to what plan, or system its powers are exercised—what were its efficient means of subjecting India to the British Empire—and by what course it continues to superintend and control the government of the country. The details of those glorious victories, and able political measures, by which the subjection of the country was accomplished, and by which, so many distinguished men among the Company's servants have immortalized their own fame and that of their country, is the proper theme for the historian's pen. That portion only of the historian's task will be mine, whereby may be unfolded the *sufficient causes and means* of these great achievements; and whereby it may be shown that the condition of the country, of its governments, and of its people, gave ample scope for those successes which military valour and political talent ensured. It will then be perceived by reflecting minds that no exertion on the part of the people, and no efforts on the part of their misgoverning rulers, could long have retarded the subversion of the country under *some* new dominion. And it may be hoped that all who have just views of the true prosperity of a nation will become convinced, that the destruction of the British power and of its plan of government, whether by the successful force of Native or of Foreign conquerors, would assuredly involve this vast country in universal rapine and violence, and remove to distant ages all prospect of a settled rule under equal laws.

SECTION II.

Of the Meaning of the term Company; and of the Nature and Objects of such an Association.

Any number of men associated together for a particular purpose may be properly called a *Company:* but the term is most usually applied to those bodies who bind themselves together by some mutual covenants or rules, with a view to carry on some general course of trading, or some particular branch of manufacture or commerce. Thus, four or five persons, and sometimes a greater number, agree together to become *partners* in carrying on commercial dealings, when the business they engage in is of that extent, and requires so large a capital, as to suggest a subdivision of labour, and a joint contribution of funds. They settle the terms on which their affairs shall be managed, and the profits divided, by some express written instrument. They thereby become a *Company,* and trade under that designation—one such Company being distinguished from another by a reference to the names of some one or more of its members, or by a reference to the nature of the business carried on, or the object of their association. Thus we hear of Arbuthnot and Company, the British Iron Company, Dwarkath Tagore and Company, the Equitable Insurance Company, and so on.

Private and voluntary associations such as these, providing as they do for a succession of members as vacancies occur in the partnership, are calculated, when their affairs are judiciously managed, to last long; and some such houses of trade, through their extensive dealings and large accu-

mulations of capital have exercised great influence on a whole nation's commerce. The union of many such houses for the purpose of representing and protecting the general interests of all trading classes will necessarily have weight with even the Council of Government, and will sometimes qualify, and sometimes dictate, its commercial measures. But such private partnerships have in their very constitution the seeds of gradual decay—the bond of association by which they are kept together is uncertain and discretionary in point of duration—their capital, and the power and influence depending on its amount, is necessarily confined within very narrow limits. For, in the first place, *each* individual member being responsible in his person and estate for the whole amount of the Company's debts, their speculations would naturally be the less bold and extensive. In the next place, it must be expected that, in a long series of years and changes of members, the mischances of trade, or the mismanagement of the partners, would at some time or other dissipate the whole existing capital, and thus at once dissolve the association. In the third place, it has always happened that the expenditure, or the accumulation of each member for his own personal objects, has kept the current capital, and the consequent extent of their dealings, within such bounds as would always leave the Company exposed to the various chances of dissolution. And, lastly, the existing members commonly, at one time or other, combine in the desire to abandon the labours of their business, and either appropriate their whole funds by division, or transfer some remnant of them into the hands of other parties, who commence a new course of dealing, or one upon some smaller scale. Under all these circumstances there are few instances of *private* trading houses sustaining their existence as an associated Company beyond the period of a hundred years; and none of their effecting any of political results beyond the immediate commercial objects of their uniting in partnership.

But there are some commercial enterprises of such magnitude, calling for so large an extent of capital, involving so much risk, demanding so much the discussion of able and experienced men, and requiring the various labour of so many in the management of them, that they are quite beyond the means, as well as the courage, of a few individuals bound together only by their private mutual covenants. They can only be undertaken by the strength of the government itself, and the employment of the national funds of the people, or else by some numerous association of a public quality, sustained by special privileges and powers, and secured from sudden dissolution, and the individual ruin of its members, by express public rules and laws. It is seldom that a *Government* can engage advantageously in any trading affairs, which so peculiarly depend on that activity and zeal which is only to be kept alive by some personal interest in the results. It has, therefore, been the constant policy of the English Government rather to encourage such speculative undertakings by those who are altogether unconnected with its administration; and which undertakings it has always shewn itself ready to assist by the delegation of all those powers and privileges, which, according to the specific quality of each such speculation, those who engaged in them might appear to stand in need of.

Objects of this nature have suggested the formation of Companies of a different, a more extensive, and a far more powerful and permanent quality, than those Companies which arise out of mere trading partnerships governed by the private covenants of the members. Various as may be the powers granted by the Government to such associations—various as may be the peculiar advantages conceded, in proportion to the risk of losses in the undertaking—and various as may be the systems laid down for conducting their respective affairs, there are some char-

acteristics which all such Companies have *in common,* and which it is expedient to bring to particular notice.

The acquisition of the great capital required can only be accomplished by dividing the shares into a large number, the price of each being of so moderate an amount as that every person joining in the undertaking may take a larger or smaller stake in the concern proportionate to his means. According to the amount of the capital must therefore be the number of the shareholders—and that number is never so small but that a selection must be made from the general body of some small portion who are to *represent* all parties, and conduct, or at least govern, on behalf of the whole association, the details of their business. Each individual member is only to be responsible to the extent and value of the contribution by which he has purchased his share. With that view, the whole body is to be considered by all who deal with them as if it was one individual person ; its *joint property* being only liable to be made available for the payment of debts, and for the satisfaction of engagements, but not the *private* property of any of the members, and still less their persons being subject to imprisonment, as other private persons would be for the purpose of enforcing payment of their private debts. Such a scheme for the transfer and inheritance of the shares of each member, and also for election to all vacancies arising among the directors or governors of the affairs of the Company, is provided by the express laws constituting the Company, that the existence of the Company must last as long as the law itself lasts on which its existence is based. Not even the loss of all their property can put a final end to the Company. It may still raise new funds, or it may still exercise any powers or privileges which do not depend on the employment of capital. And, lastly, such a plan for the internal government of the united body is ordained, as that the resolutions of a majority, in some cases that of general assem-

blies of all who will attend, in others that of the selected governors—in some cases a simple majority, in others a majority of some larger proportion—shall bind the whole Company: and in a similar manner general regulations are allowed to be passed, for permanent observance in the conduct of their affairs.

Under such a constitution as this, and with these fundamental powers for their support, many important Companies of a national interest and character have been formed in most of the countries of Europe. In none, however, have they existed so numerously as in England; and in no other country have such extensive enterprises been undertaken or accomplished through such bodies. But neither in England itself, nor in any nation on the face of the globe, has there ever arisen an association, which—whether we look to the enormous amount of its expenditure and of its accumulated wealth, or to its influence on the commerce of the world, or to the vast political changes it has effected—has equalled that of the East India Company in real grandeur and importance. Its origin, constitution, powers, and privileges we will now proceed more particularly to examine.

SECTION III.

Of the Origin and Formation of the East India Company.

The trade between Europe and India had from the earliest ages been carried on partly by way of the Persian Gulf, and so by a tedious and dangerous journey across a large portion of the continent of Asia, and partly by the course of the Red Sea, and so through Egypt. The first discovery of a passage to India by sailing round the Cape of Good Hope was made by the Portuguese towards the end of the fifteenth century of Christ. The comparative cheapness, facility, and certainty of this new route of communication between the ports of India and Europe, *entirely* by sea, led to the abandonment of the ancient courses of traffic. The Portuguese by seasonable presents and successful negociations with some of the stronger states, and by the terror of their arms and naval forces employed against the weaker class of states, established in the course of a hundred years settlements and factories, not only on various parts of the Indian Coasts, but on many of the Islands washed by the Indian seas, and even upon the shores of China. Possessed of all these advantages, and undisturbed for many years in their prosperous career, they soon formed the resolution of engrossing to themselves the whole of that trade, by the first fruits of which they had become enormously enriched. They prepared themselves at any sacrifice of their wealth, by the utmost exertion of their influence with the various Native governments, and even by open warfare, to crush all attempts by any other merchants to open a course of commerce with any of those Eastern territories with whom they had effected an intercourse—

which attempts they presumptuously held to be an invasion of their rights as the first discoverers.

Such was the state of things when, at the close of the sixteenth century of Christ, many of the merchants of England combined in the determination to contend for a share in the lucrative trade with the East. It must be obvious that any efforts of one, or of a few private individuals, to open such a traffic must fail. The pre-occupancy by the Portuguese of a trade which had been established at an immense outlay of national funds, and which funds had been increased to a vast amount through the gains of a hundred years, enabled them easily to undersell and ruin any such private speculatists. It was also fully to be expected that, soon or late, this right of trade must have to be contended for by force of arms. At the same time it was seen to be an object of great national concern to the growth of the commercial prosperity of England. It was felt to be a public reproach that a nation, boasting itself as inferior to none in maritime strength, should be excluded, at the will of one of the most insignificant states of Europe, from any participation in a trade which by nature lay open to all mankind.

The plain and the only method of engaging in this enterprise which, under the circumstances related, could justify any confidence of success, was by the formation of a public Company upon those principles and upon that plan of association which has already been in some degree explained. It was necessary that naval expeditions should be prepared on such a scale as might promise some protection, if not security, against violence—and at the same time might win respect from the Native powers. It was necessary that the value of the merchandize, and the amount of purchase money, should be of such an extent as to attract the consideration of the people with whom they proposed to open a permanent commerce. Competent persons had to be en-

gaged for the task of effecting negociations and treaties with the Native powers. A large expenditure had to be provided for in the purchase of land, the construction of warehouses, factories and residences, and for a variety of other purposes, needless to enumerate. The capital to be contributed for objects of such magnitude and extent must necessarily be large—the risk of failure manifest—but eventual success would be shared by the whole nation, as well as by the adventurers. All these considerations were sufficient to suggest, not only the organization of a great public Company, with all those constitutional powers requisite for maintaining its existence, its union, and good government—they suggested, likewise, to the British Government the expediency of giving peculiar encouragement to the undertaking by the grant of extraordinary privileges and advantages.

It may be remembered that, when referring in the last discourse to those independent powers of the Crown which are termed *Prerogatives,* mention was made of that by which the reigning King or Queen regulates the conduct of the national trade. It is chiefly with a view to the encouragement and regulations of commercial affairs that the Crown has been used to exercise another Prerogative power; which, though distinct in itself, I have thought it most convenient to notice in connection with the subject of this present discourse; and which consists in the creation of those associated bodies, usually termed *Companies*, but also named by the more general term of *Corporations,* having perpetual existence by course of succession, as vacancies arise, or by addition to their number according to any scheme for the admission of new members. The document by which the Crown creates this associated or corporate Body, or Company, is called a *Charter;* and the characteristic qualities common to all public Chartered Companies formed for the purposes of trade have been already alluded to. It was formerly usual for the Crown, in grant-

ing Charters to these trading Companies, not merely to concede to them the faculty of acting as if it was one individual, with the same powers of making contracts, holding property, suing in courts of law, and being responsible only through its *common property* for debts and liabilities incurred, but it was also customary for the Crown to grant to them the liberty of exercising many of its royal powers, and many exclusive privileges and advantages, which, however expedient, could only be legally granted, according to the true constitutional laws of the English Government, by the authority of the supreme legislature itself. It will be seen in the progress of this discourse that, as the laws of the English constitution have become better settled and known, all the powers and privileges of the East India Company were at length sanctioned by the legislature itself in a series of *Statutes*. But, at the time of the first formation of the Company, recourse was had only to the authority of the then reigning Queen of England, Elizabeth, who granted to them their first Charter in the year of Christ 1600.

By this Charter all the merchants and adventurers, who were willing to contribute such sums as might be agreed to be received by the governing portion of such subscribers, were declared to constitute a Corporation, or Company, with all those inherent powers and qualities which have been shewn to be the common characteristics of such associations. They were to be governed by a governor and twenty-four individuals, in this Charter called *Committees* but subsequently termed *Directors*, and who were to be chosen annually by the subscribers, who have been since denominated *Proprietors*. And, besides the grant of some exemptions from the payment of duties on their exports from England, the Charter conveyed the important privilege of a sole and *exclusive* right of trading with all countries eastward of the Cape of Good Hope. The association was named "The "Governor and Company of Merchants of London trading

"to the East Indies." The duration of the Company was, however, limited to fifteen years, with a right of renewing it for fifteen more with the consent of the Crown—and the Crown at the same time was empowered to abolish the Company at any time upon giving two years' notice.

SECTION IV.

Of the Progress of the East India Company, until they became a Political Power.

Under the terms and privileges of the Charter of Elizabeth, often renewed by succeeding monarchs, the Company continued to prosecute their trade for a course of sixty years. They raised funds from time to time of various amounts, which were managed sometimes as a common stock in a joint trade, and sometimes as separate stocks of one or more of the subscribers, and traded with on their separate accounts. The voyages were made at no regular periods, and the ventures of capital in each voyage were of the most various and uncertain amounts. Their successes, though often clouded by reverses, were on the whole prosperous enough to encourage their perseverance. Throughout this first period of their trading, they were involved in continual warfare and contests, not only with the Portuguese nation, but also with the Dutch, who, with far more energy than the Portuguese, engaged in such an extent of commerce, and founded such numerous and extensive settlements, as at one time threatened to overwhelm all competition for the trade of the East. The Company had likewise to endure many contests with rival traders and Companies of their own countrymen, who prosecuted a trade in defiance of their exclusive Chartered rights. In the result, however, the commercial intercourse between England and India, through the agency of the Company, was by the year of Christ 1660 fixed on a permanent basis, and no less than eight Settlements or Factories had at that period been established on various parts of the coast of India, governed by two Boards, each consisting of a President and Council, who con-

ducted all the business required to be transacted in this country. One of these Boards was stationed at Surat; which, under the permission of the Mogul Emperor, was in the year 1612, the first settlement founded by the English in India. Under the presidency of this Board were placed the Factories of Cambay, Ahmedabad, Gogo and Calicut. Under the presidency of that of Fort St. George were placed the Factories at Hooghly and Masulipatam.

But in 1661, through another Charter granted by King Charles 2d, the Company became vested with further important powers. After confirming all former privileges, the King granted them the authority *to judge* according to the laws of England all persons living under them at their Settlements, and to *make war and peace* with all Native states. This was, in truth, to empower this Company to *found and govern Colonies* in whatever parts of India they might obtain any territory. Each settlement became, as it were, a petty nation, over which the Company ruled with regal authority; and the whole of these settlements acting in combination, and supported by the naval force which the numerous vessels employed in carrying on the trade could at all times supply, displayed a national strength calculated at least to deter any hasty aggression by the surrounding Chiefs. This local strength was very considerably increased by the acquisition of the Island of Bombay, which the same King, (to whom it was ceded by the Crown of Portugal) granted in full property to the Company, shortly after the gift of his Charter.

The objects of the Company, however, were still for many subsequent years, solely confined to the prosecution of *their trade*. As their powers became augmented, so also did their knowledge in the most profitable methods of carrying on their traffic improve. Greater union and greater regularity marked their proceedings; the number of mem-

bers, and the amount of their subscriptions proportionably increased. Their command of money enabled them to establish additional Factories and Settlements, as well as to extend the dimensions of those they already possessed. Pipley, Cossimbazar, and Balasore—and soon afterwards Calcutta and Govindpore, in the interior of Bengal, and Vizagapatam and Fort St. David on the eastern coast, were added to their territorial possessions. Many of their towns contained a numerous population of Natives and English, who were governed as subjects, and protected by the erection of military fortifications.

In thus fixing themselves permanently within the dominions of the Indian states, the Company doubtless had in view their independence and security against the violence of the surrounding Native powers. But, although the firm establishment of their commercial intercourse, and the gradual augmentation of the trade by which they were continually enriched, was for a long period the sole principle which actuated these and all their measures, nevertheless, in the progress of events, transactions occurred which, perhaps unconsciously to themselves, clothed the Company still further with a National and Sovereign character, and in reality placed them in the position of one of the political states, among whom the territories of India was divided. In the year 1685 the Company, resenting many oppressions and wrongs which their servants at their Factories in Bengal had endured at the hands of the neighbouring Native powers, fitted out an armed fleet of ten ships, with several hundred soldiers, and also a Regiment supplied by the King himself, for the purpose of vengeance and future security by force of arms. They maintained a warlike struggle for many years with their oppressors, and at length called down upon themselves the forces of the Mogul Emperor Aurungzebe himself, who at first resolved on expelling the English altogether

from India. But so formidable were the military resources of the Company, that, after much fighting and various fortunes, an amicable adjustment of all differences was effected, and the Company were left in possession of all their acquired territories. About the year 1690 the Company resolved to *raise a revenue* from the inhabitants, living under their government—that being, as the Directors expressed themselves, "as much a subject of their care as their trade; for "by it they must *maintain their forces, and make themselves* "*a nation* in India."

We have now arrived at the end of the first century of the Company's intercourse with India, at which period a further and more important change was made in its quality, resources, and internal constitution; and when such an improved organization of its government was arranged, as rendered it at length capable of those vast conquests, it was eventually destined to achieve. Under this new organization and settlement of its powers, it was enabled to maintain its rule over those large provinces it gradually brought under subjection; and under the same principles of its constitution, modified in some details by subsequent Acts of Parliament, it continues to direct and superintend the administration of the British Empire in India to this day. This change arose out of a circumstance which, at first, rather threatened ruin to the Company than any addition to its strength.

The people of England, according as the fundamental rules of its political government came to be canvassed and settled, saw that the exclusive privileges and sovereign powers granted to the Company by the sole authority of its monarchs, and not by the supreme legislature, were inconsistent with the constitutional law of the land, and might fairly be disputed by such as chose to make it their interest so to do. These considerations led to the formation of a

powerful rival Company determined to claim their share of a commerce, the extensive advantages of which, both commercial and political, became continually more apparent, and in which it was commonly asserted that every Englishman had an equal right to partake. This rival Company was established under the express authority, and under the special regulations, of *an Act of Parliament ;* which act authorized the King to grant another Charter in conformity with its provisions to the new Association. The Charter was in 1698 accordingly granted to them by King William the Third, under the name of " The *English* Company trading to the East Indies"—(the old Company having been termed the *London* Company)—and thus two Companies, with opposite interests, and no small animosity against each other, engaged in the same commercial field. The Charters of the old Company, indeed, being limited in point of duration, would have shortly expired ; and thus the new Company trusted they might have become relieved from their powerful competition. But the old Company, being still in possession of so many valuable settlements, and having influence enough to get their former Charters partially renewed, still kept their ground. It was soon seen how mutually prejudicial, if not ruinous, the contests of two such Companies must prove ; and, after some years of warm discussion, an union of them was accomplished, under the new Charter lately granted to the English Company ; and, as the grant of this Charter had been previously sanctioned by an express Act of Parliament, so, (upon the union of the two Companies becoming completed) it was afterwards confirmed in favour of both the Companies united by the express sanction of another Act. Under this new arrangement the Company surrendered all their old Charters, and the two Companies took the one denomination of " *The United Company of the Merchants of England trading to the East Indies.*" This continued to be its legal and proper name, until the passing of the last statute for the regulation of the Company, and of the Go-

vernment of India, in the year 1833, when its title was altered to that of "*The East India Company.*"

This Charter of William 3rd, so sanctioned and subsequently confirmed by statute, was dated in the year 1698. It granted (with many modifications, and in a more specific and detailed form) to the new English Company similar powers, and exclusive privileges, to those which had been granted in the previous Charters of the old London Company. It ordained what persons might become members of this Company under the name of *Proprietors*, and upon what terms. It regulated by what body the whole affairs were to be managed, and the mode of their meeting and course of transacting business. It regulated the qualifications of those Proprietors who were to be eligible as Directors. It laid down the course of holding general assemblies for purposes of elections, and for making ordinances and regulations for general observance in the exercise of their powers and functions. And, lastly, it laid down certain general rules for the mode of conducting the government, and the administration of justice, in India. I shall have occasion to notice in greater detail some of the provisions of this Charter, after referring to those later Statutes by which they have been modified and extended, and when I come to explain the nature of those present existing powers, and that settled plan of rule, by which the Company still superintends and directs the course of government in India. In the mean time we will pursue the history of the Company's progress.

Greatly as the Company's means were augmented by the union of this numerous body of members, from whom a capital stock was shortly raised, of upwards of three millions sterling (or three crores of Rupees)—greatly as their political ambition might be supposed to be excited by the consciousness of their own strength, by the assurance of

every needful military assistance on the part of the English Government, and by the firm security in which their extensive territorial possessions were held—they still confined their whole attention for the course of the next forty years, to the prosecution of their commerce, satisfied with the amount of annual dividends which their successful management of it produced. About the year of Christ 1749, however, unforeseen and apparently casual circumstances (but such as the real condition of the people naturally gave rise to), urged them upon that career of territorial conquest, in which they found themselves unable, even though so inclined, to stop, until the mighty Empire of India was reduced under their rule. In order that such a result may be rationally understood, instead of its being the theme of ignorant wonder, it will be useful to make some survey of the political posture of the various states of India up to this period, as well as of the means and powers which on the other hand sustained the Company throughout the contest.

SECTION V.

Survey of the Political Progress and Condition of the Native States of India, previous to the Conquests of the East India Company.

Those who have examined with care all the genuine materials of information, as regards the true condition of the people of India in ancient times, and before its invasion by the Moguls, and who have at the same time been capable of drawing probable inferences from such information, have been led to the conclusion that the whole country has ever been the scene of internal wars and convulsions. They have found no reason for supposing that any considerable portion of the country ever long enjoyed peaceful repose under a strong and just government; and still less are there traces of any settled plan of power, under laws regularly framed, and as regularly observed. The country seems to have been from the earliest times divided into numerous petty states, which their several rulers governed on no other principle than their arbitrary will. Sufficient has been said in a former discourse, to shew that little happiness, tranquillity, or security can be enjoyed by any people in such a condition.

It is a plain proof of the correctness of this view of the former condition of the people of India, that the first invasion of the Mussulmen from the north-west, was repeated under the same chief twelve times, and with scarce any other object than devastation and plunder. Twelve times did Mahmoud issue with his horde of undisciplined barbarians from Ghizni, and the neighbouring cities—and, overcoming with ease

every opposition, spread carnage and desolation over one nation after another, down to the very shores of Guzerat.

From the period of these invasions, which occurred near the year of Christ 1000, we may trace the gradual subjugation of one portion of India after another, to the yoke of the Mussulman Emperors, till Aurungzebe, the most powerful, and perhaps, the most tyrannical and oppressive, of all these conquering despots, finally, towards the year 1700, extended his actual sway over most part of the country, from north to south—and rendered even those petty states which he spared the mere dependants on his favour and protection. According to the course observed by his predecessors, he appointed over numerous wide districts masters who, in his name and as his deputies, ruled the people at discretion—and whom he vainly hoped would be kept in subordination and obedience to his own supreme authority, and that of his successors. These inferior masters, again, parcelled out portions of the territories consigned to their government to their own subordinates, who in the same manner were empowered to rule by no other law than their own arbitrary will. Thus the people of India were prostrated beneath a hundred petty tyrants, most of whom derived their origin from foreign lands. They all governed upon the same principal policy, that of draining from the common toil of their subjects, those resources which should maintain themselves in luxury and splendour, and at the same time furnish them with the means of engaging in revolts against their immediate superiors.

Throughout the progress of those seven centuries, down to the reign of Aurungzebe, during which the Mussulman invaders continued with various fortunes, to push their conquests in India, such had been the character of their sway, and such the condition of the subjected people. They were

often opposed, with more or less permanent success, by the ancient Native states. The supreme authority of the Emperor, and the limits of his actual dominions, were often reduced to narrow bounds, by the incursions of new foreign invaders, or by the successful rebellion of powerful subjects. No sooner had one great sovereign established by his victories, or his talents for government, an extensive and well united dominion, then his death followed by domestic dissensions, and violent competitions for his throne, again threw the whole Empire into confusion. The chief officers of the government divided into factions, each headed by a competitor for the supreme power. The party eventually prevailing in the struggle, usually owed his success to bloody battles, spoliations, and extortion. Amidst such scenes national industry, the offspring of national security, and the only parent of national wealth, can never thrive. It is true, indeed, that the well-ordered governments of able and powerful Monarchs would sometimes create seasons of repose, and with them the return of confidence, and a corresponding increase of the general prosperity. But such seasons were but temporary, and usually short, because not based on any settled plan of power, which alone can impart firmness and permanency to political institutions. It is true that vast riches and resources would be sometimes accumulated in the coffers of the rulers, and sometimes be expended in the construction of magnificent buildings, or in maintaining the splendour and luxury of a royal palace. But these are no proofs either of the political strength of a people, or of their happiness. Such wealth may be the fruits of the forced labour of those who can retain little for themselves. Such structures may be the work of groaning slaves. We must judge of the power and the prosperity of a nation—not merely from the personal grandeur of its ruler, or the stupendous monuments he may build—but from the general diffusion of wealth, and the enjoyments of life among the bulk of the people, the security of property, the attachment of the in-

fluential men to the form of government under which they live, and their sense of its benefits; and above all on the spread of education and useful knowledge.

From the death of Aurungzebe, in the year 1707, we may date the gradual decay and dismemberment of the Empire of the Moguls. By the year 1749 (when the career of English Conquest began) the authority of the reigning Emperor was little more than nominal over the greater part of India: and by the year 1770 he had become a mere tool at the disposal of one or other of the various contending states of India; till at length, through the subsequent conquests of the English, all his real authority as a ruler sunk, and was extinguished for ever. The nominal title, however, is still claimed by a descendant of the family, though no longer deferred to by the actual successor to the imperial power—the Governor General of India. The feeble-minded descendants of Aurungzebe, involved in perpetual contests for mastery over each other, could no longer control the ambition of their subordinate chiefs, who seized on every such occasion of weakness and dissension to assert, and secure, their own independence. More concerned in seeking assistance from them, than in punishing their rebellion, the competitors for the imperial throne were obliged to connive at that disregard of their authority, which they felt it impossible to prevent. Amidst these struggles for dominion, this disunion among the revolted rulers, and this breaking up of the Mussulman Empire into separate states, those Hindoo nations which had never been actually, or only partially, subdued, found opportunities of rearing other distinct sovereignties, and of claiming their own share in the general scramble for territory.

The most conspicuous among these Native powers, was that of the confederated Marhattas. It is beyond the scope of this discourse to record the history of their origin and extensive conquests. But it is material to notice that the

associated nation, more than any other body of people, contributed to the downfall of the imperial power of the Moguls, by a long series of successful invasions. Like the Mussulman Empire, however, which that of the Marhattas at one time almost equalled in extent, this new state was soon destined to fall asunder from the same unfailing causes. Without any settled system of government, it never could be held together in union and obedience. Every vacancy of the supreme rulership led to intestine war. Every commander of an army aimed at, and often succeeded in, establishing a sovereignty for himself. At the period when the English Company first entered into the list of Indian powers, the Marhatta confederacy was already composed of several independent states, acknowledging only a nominal master in the person of the Peishwah at Poonah. And, although these nations once more united their arms to oppose an Affghan invader, they on that occasion, in the year 1760, at Paniput near Delhi, sustained a defeat, the most memorable in the annals of history for the dreadful amount of slaughter. From that blow they never wholly recovered; but remaining split into several separate states, each in its turn had to sustain individually the shock of the approaching contest with the English.

Such, then, was the posture of the various political powers of India, at the dawn of those events which ended in the foundation of the British Empire in the east. Rivals in ambition, rivals in interest, revengers of past oppressions, or claimants of lost authority, each state regarded its neighbour as an immediate or a probable enemy. The ruler of each nation having, in most instances, attained to dominion either by domestic bloodshed, or by rebellion, made it his first care to secure himself against the opposition of his own subjects, and his next to aggrandize his original dominions by the overthrow of surrounding countries. The security of his own government, based on no fixed laws, but solely upon arbitrary will, could only be maintained by

enforcing the principle of all absolute governments—namely, a fear calculated to produce universal and instant obedience. The power of such rulers over their own subjects, and their strength to resist or attack other states, depended entirely on the amount of the labour and services of those subjects which they could engross for their own objects, or on the amount of wealth they could amass, through which such labour and services, or those of others, were to be purchased. Neither did they scruple to avail themselves of any foreign assistance which chance or intrigues enabled them to procure. When a state happens through these or other means to have acquired a preponderating power and extent of territory, resources of this nature may ensure a temporary period of internal quiet, or of successful conquest. But such a course of government is nevertheless, in itself, the source of national weakness. The people having no cause for attachment to their government, impoverished by its exactions, and harassed by continual strife, are always ready to fall off, and seek the protection of new masters under whom they may hope to enjoy more repose, and better security in their possessions. As the whole authority of the state rests in the hands of one man, the overthrow of that one man, and generally his defeat in one battle, decides the fate of the nation. The assistance of foreign powers can only be purchased by concessions, which are calculated to raise an humble ally into a superior adversary. These sources of weakness bring on the gradual decay and dismemberment of the mightiest Empire. But when an extensive country has already become divided into a great number of petty states, all labouring under the same defective course of government, their mutual weakness is likely, in the midst of perpetual and common disturbances, to keep them all down to the same political level, till some new power, stronger than any one of them singly, shall become a competitor for general dominion.

If, therefore, the nations of India had been *left to themselves* after this period of their fortunes, there is every probability that they would long have remained in the same condition. Having regard to the submissive habits of the people—the many ages of servitude in which they had acquiesced, either under foreign masters or adventurous usurpers—and to the absolute nature of their government—there is no good reason for supposing that the internal strength of any one of them was soon destined to improve by any durable augmentation of the national wealth, or by greater stability of the governments established. The Marhatta states, which had become the most powerful, directed their efforts more to the plunder, than to the permanent conquest, of other territories, or the good management of their own. The Mussulman powers, sometimes banded against one another, and sometimes against their common foes—the Marhattas—each with difficulty preserved its own independent existence, and continued to govern by the same system which had failed to form a stedfast and united Empire in the course of eight centuries of changeful domination. The other states of India, either leaning upon each other for their common safety, or rendering themselves subordinate and tributary, first to one, and then to another, of their more potent neighbours, as each in turn was considered best capable of affording protection, maintained their own position by thus adjusting, through their own weight, the balance of power between hostile nations. Those countries bordering on India, which formerly sent forth the armies by which it was so often devastated, and finally for the most part subdued, had themselves become weakened by continual wars and convulsions. But, whatever may have been, soon or late, the political state of India, had these nations of the East been left to themselves, of this we may be certain—that none of the existing forms of government nor any change which conquests among one another could produce, would ever raise the country from that condition which I have en-

deavoured to pourtray. Such as had been the state of the people from their earliest history under the same forms of government, and under the yoke of conquerors who introduced no better, such it is reasonable to conclude would it have continued.

These conjectures upon the probable fate of India, in the absence of any interference by European powers, may serve to reconcile its people to those political vicissitudes which it is the destiny of all the nations of the earth to undergo; and especially to such change as should introduce a settled scheme of government, liberal institutions, and the blessings of internal peace: but there can be no useful purpose in further dwelling upon them. The time had arrived when, circumstanced as the whole country was, it must of necessity have become subject to one or other of the foreign contending states, which had gained a firm footing on its soil.

SECTION VI.

Of the Progressive Conquests of European Nations in India, and the effects.

The Portuguese, and after them the Dutch, had, as we have seen, for a long series of years kept up a formidable resistance to the earliest attempts of the English to participate in the trade with India, which they had engrossed to themselves. If through that naval strength, which both these nations in their contests with each other were compelled to maintain—through the vast capital they employed in this profitable trade—through their numerous and considerable territorial possessions—and through that influence which all these advantages combined gave them amongst the Native states—either of these European powers had been enabled to crush the early efforts of the infant English Company to establish their position in India, it is impossible to assign limits to their probable progress towards Eastern dominion. That these resources were sufficient to raise each of these two nations to the rank of an independent power among the states of India is no unreasonable presumption. The superiority of their arts and arms, and the strenuous support of their governments in Europe, were calculated to extend and strengthen their further acquisitions. But these were nations altogether unequal to cope with the might of England. Their advance was at once cut off as soon as political superiority became the common cause of the English Company, and also of its government. In the mean time a far more powerful competitor for the Indian sceptre than either the Portuguese or the Dutch stept into the field.

This was the French nation. France and England, the two most considerable nations in Europe, had at this period (1746) declared open war; and it was not long before these distant regions of the East were destined to feel the effects of their contention. A French Company, in imitation of that of England, had with a similar view to trade possessed itself of several settlements in India, all under the government of a President and Council established at the then strongly fortified town of Pondicherry. They also held the islands of the Mauritius and Bourbon in the Indian Sea, from whence they were enabled to obtain easy supplies, and even to fit out vessels of war upon emergencies. In the year 1746, by a sudden attack, for which the English were unprepared, they had made themselves masters of Madras. The Nabob of the Carnatic, whose assistance the English had in their extremity sought and obtained, sent his son with an army of ten thousand men for the purpose of recapturing that fortress from the hands of the French. The French marched out to meet them with a body of four hundred European soldiers only. To the utter astonishment of the opposing host this small band of Frenchmen gained a decisive victory; and set the first example of the vast proportionate superiority of disciplined European troops, over Natives of less robust bodily frame, and altogether unversed in the art of war. The French nation now openly aimed at political supremacy in India.

An ambition of so magnificent a character, deliberately formed, and acted upon by a few individuals at the head of scarce fifteen hundred of their countrymen—settled in the midst of numerous Native states, the weakest of which could gather together an army of ten thousand men—may seem presumptuous beyond all bounds of reason. Nevertheless the history of events will shew that at least temporary success must have attended this gigantic scheme of conquest, but for the opposition maintained by the English.

The interests of the French in India were at this period presided over by a succession of the most able men that ever served a negligent and ungrateful country. By the overthrow of the English at Madras, and by the discomfiture of the forces of the Nabob of the Carnatic, the French found themselves, relieved from the immediate pressure of any enemy, and in possession of a territory inhabited by a considerable and industrious population. Additional forces, both naval and military, arrived—and their strength was still further augmented by the formation of several companies of Sepoys, whom the French were the first to train according to the European rules of discipline. They now commenced strenuously, and with confidence the apparently easy task of wresting from the English the slender hold which, after the loss of Madras, they had upon any portion of the Carnatic. At the same time they formed alliances, as well with a formidable competitor for the Nabobship of the Carnatic, as with a still more powerful Prince, a claimant for the Subadarship of the Deccan itself (of which the Carnatic was but one of the dependencies)—and they soon discovered that the might of their assistance decided the possession of both the one throne and the other. In the progress of these distractions, and of the bloody contests they produced, the French gained such an ascendancy as enabled them to set up and destroy one ruler after another, as it suited their objects of increasing their own power: till at length, in a grateful mood, one of the rival Subadars of the Deccan, who owed his elevation entirely to their interference, constituted the French Governor chief of all the countries on the coast of Coromandel from the Kistna to Cape Comorin, and appointed the Nabob of the Carnatic to be his deputy. While the French were thus becoming masters of a wide tract of country, and Sovereign controllers of the affairs of the whole Deccan, they were also gaining ground, and strengthening their position in Bengal. It was said without much appearance of exaggeration, that the Emperor at Delhi would soon tremble at their name.

But all these grand designs were destined shortly to be frustrated, and the French influence in India extinguished for ever by the victorious successes of the English. It will not, however, appear foreign to the subject of this discourse if I cast a cursory glance at what would probably have been the eventual fate of India, had any other European nation but England attained that supreme power which was once so nearly within the grasp of the French.

The Portuguese nation, one of the very feeblest of the European powers, unable to subsist at all but by the protection of more powerful allies, and often on the very verge of destruction by foreign enemies, it is certain could never have retained but for a few years their hold upon such an Empire, which chance might have placed under their government. The Dutch, who with difficulty attained the rank of an independent state in Europe, were themselves afterwards subjugated by the arms of the French. The French after a series of wars which deluged all Europe in blood, were twice utterly overthrown, and received their political destinies at the will of their conquerors.

It is obvious, therefore, that, had it been the fortune of either of these nations to have attained dominion over India, new wars and struggles must have devastated the country. After another age of national misery, tranquillity might have been restored, and a new era of prosperity have begun, by the firm foundation of such an Empire as the English have now established, or on the other hand, the country might have been resigned again to that state of universal disunion and misgovernment which from ancient times had prevailed.

SECTION VII.

Of the Means and Resources of the East India Company for the conquest of India.

It was at this crisis of the highest political fortunes of the French, that the English Company—first, in compulsory resistance of attacks which threatened their utter ruin and expulsion from India, and afterwards from the force of circumstances—began in the year of Christ 1749 to engage openly in that contest for territorial dominion which ended in their settled supremacy. Having surveyed the posture of the various Native states, and the feeble condition or dependency to which most of them were reduced and the quality as well as extent, of that power and influence which the French had built up—let us turn to examine what were the means and resources which supported the Company through the arduous career upon which they were about to enter.

From the year 1698, the date of that Charter, the provisions of which I have in a general way already rehearsed, to the period which I am now alluding to, no addition had been made, either by the legislature or by any Royal grant, to the powers and privileges of the Company, nor any alteration in those already conferred. The Government of England was content with renewing from time to time their Charter rights for further terms of years, providing at the same time for the more secure enjoyment of their exclusive trade. The King interfered by his own Prerogative no farther than by regulating the course of administering justice at the three Presidencies, which were now those of Madras, Bombay and Calcutta. A treaty of peace, however, had been

arranged in 1749 in Europe between France and England, under one of the stipulations of which Madras was restored to the English Company.

In the meantime the Company had, by their own previous negociations with the Native powers, obtained no less than thirty-seven towns in the neighbourhood of Calcutta, and added three villages to their possessions at Madras. At each of these settlements they maintained a garrison of about 300 European soldiers; and it may be presumed that no less a force was kept up at some other stations. At Cuddalore, including the adjacent fortified town called Fort Saint David, they had acquired a territory still more extensive and populous than their settlement of Madras. Their capital stock subscribed by the Proprietors amounted to near three millions sterling, as we have seen—and, such was the prosperous course of their trade, that they not only were able to pay annually dividends to the amount of eight per cent to the Proprietors of stock, but they had credit to borrow no less a sum than six millions sterling, on which they paid regular annual interest. With this command of money they had in a long course of years erected numerous and strong fortifications, and supplied them with extensive warlike stores; they had maintained, and continued to enlist in their service, bodies of English troops and naval armaments; and they had increased their territory from time to time by purchases, until from their landed possessions alone, they derived a revenue large enough to sustain the expences of administering a local government, which will be shewn to have been at this period of no inconsiderable importance.

The population of the English settlement of Madras, amounted at this time to about 250,000 souls. That at Cuddalore could not be reckoned at less: and, besides these settlements, the several others under the Madras Presidency may be presumed to have contained many thousands.

The population under the government of the Bengal Presidency, a more fertile, and a more extensive district than that of Madras, would surely surpass the number we have assigned to the latter Presidency. The Island of Bombay, together with the adjacent island of Salsette, has never been supposed to contain a less population than 300,000; and the English settlements at Surat and at other places on the western coast, would contribute materially to swell the whole amount of the Native subjects of the Company. They might probably be reckoned at between one million and fifteen hundred thousand souls.

The power of the Company by sea had come to be of the most formidable character. In their first contests with the French, and before a step had been taken in hostility with the Native states, no less than from fifteen to seventeen vessels of war, some of them of the largest class, besides eleven vessels for the transport of troops, appeared at one time in the Indian seas. Some of these vessels, with their officers and crew, were in the regular pay of the Company; some were supplied by the King with a view to the glory of the nation and victory over its principal foe. Such a force was alone sufficient, if well conducted, to sweep the ocean of every antagonist, and to pour the tide of conquest upon any state in India it might attack.

But all the resources which the Company could command, sunk in importance when compared with that constant and resolute support which the government of England was itself invariably ready to furnish in a cause which was seen so much to concern the national interests. It was no longer the cause of a trading Company struggling for profits, which were more or less to enrich two or three thousand British subjects. The question of pursuing the English conquests in India was one which was to decide whether England should become one of the greatest Empires on the

earth, or whether it was to yield in political power to some other nation, even at the possible loss of its own independence. From the beginning, therefore, of these vast contentions to their close, the Royal army of England continued, as occasion demanded, to send forth its warriors. "I see," said the tyrant of Mysore, "those who are before me, and I "fear them not: it is that power which I cannot see of "which I stand in awe." The daring exploits performed by the great generals and officers of the Company rendered it unnecessary that the military might of England should have been more than very partially put forth: but the consciousness of *their country's* cause, and not that of private individuals merely, nerved the soldiers arm, and inspired the statesman's deliberations, with augmented energy. The Company strove for themselves; but it was as representatives also of the English nation, and with a nation's strength.

Such were the means with which the Company commenced their contest for dominion in India. They were the means, not of a body of merchants, but of a powerful and populous colony, firmly settled, and politically governed as a nation. The rulers over it were wealthy in themselves, but wealthier in the financial support of their government. Their means were not easily to be exhausted by reverses; and they were necessarily increased by success. Their power was not like that of the French Company, who were feebly sustained by their own Government, and had but little capital to fall back upon. The power of the French, therefore, as it was originally founded upon intrigues with the Native states, so also did its progress depend chiefly on personal influence, and not on any substantial political strength. They could be no match in the long run for an enterprising and persevering enemy like the English; though it soon became obvious that supremacy in India would be decided by the superiority of one or the other of these two nations.

During those first great successes of the French which I have noticed, the Government of Madras was occupied in gaining some small accession to their territories. But the overwhelming authority with which the Subahdar of the Deccan had invested the French Government at once revealed to the Company that either their own extinction, or that of the French, as a political power in India, had now to be determined by the sword. In this conviction the Company first began to strengthen themselves by espousing the claim of another competitor for the throne of the Carnatic, who, besides the possession of the fort of Trichinopoly, maintained a considerable army in the field. The price of this alliance was a grant by the rival Nabob to the English Company of the Jaghire of Madras. The French, somewhat inferior in European forces, acted with a far superior Native army, under the banners of their own Nabob. The contest was nominally between these two Princes, but in reality between the two European states. After a war of five years' duration, in the course of which many hard battles were fought, and some of the most astonishing feats of bravery were displayed that ever adorned the military annals of a nation, all the objects of the French ended in defeat. Their Nabob was made captive and slain. The authority of his rival was permanently established. The possessions of the Company, with the addition of the recently granted Jaghire, were confirmed. Those of the French were reduced within their original limits: and the predominating influence of the English prevailed over the whole extent of India south of the Kistna.

A far more extensive scene of conquest now opened to the enterprise of the Company. Their settlements in Bengal were wantonly invaded by the Subahdar of the provinces of Bengal, Behar, and Orissa, to whose immediate government these settlements were politically subordinate. His sole motive was his rapacity; but his barbarous

cruelty threw all other atrocity into the shade. Calcutta was stormed, and given up to plunder—and 146 defenceless English prisoners were on the evening of the assault shut up in a small dungeon, and, before morning, all but 23 expired of suffocation, the necessary consequence of this inhuman treatment. But this memorable murder of the *Black Hole of Calcutta,* was the cause of still more memorable results. The just vengeance of the English in India was roused. They collected all their forces under Clive, the most daring soldier and the ablest general of his age. They gave battle, with 900 Europeans and 2,200 Native troops, to the host of the Subahdar, amounting to near 70,000 men, and in the famous plain of Plassy utterly routed this mighty army. The consequences of such defeat were the dethronement and death of this Prince, and the eventual reduction of his dominions under the English sway.

As will be presumed, this vast accession of power, together with the treasures which thereby fell to the disposal of the Company, soon led to the destruction of the rival authority of the French. With such means as they still possessed--aided by the co-operation of some Native states over whom they still had influence, and directed by the talents of many very able men—they protracted the vital contest through a constant warfare of four years after the victory of Plassy. But a series of bloody defeats ended in the siege and capture of Pondicherry, the seat of their government, and their last strong hold in India. From this final discomfiture in 1761, they never recovered; and the English Company were thereafter left to pursue their fortunes in India, free from all armed interruption, or the apprehension of it, by any foreign nation.

We have now traced the history and progress of the East India Company from its first formation to the period

when it had acquired the consistency and rank of one of the most powerful and influential among the Eastern states. The limited object of this portion of my discourse being but to shew the *capacity* of this extraordinary political body to construct that vast Empire now under its settled Government—and which capacity the gradual acquisition of the position they had now attained, by the course I have attempted to explain, will rationally account for—I shall here close that discussion which more properly befits the historian. For sixty more years the Company and its Governments were engaged in extensive warfare with Native powers: but it is their boast that throughout these contentions they have never been the aggressors; that they have never made war for the sake of unrighteous conquests; that they have never broken the faith of treaties. If, under that providence by whose control Empires rise and fall, flourish and decay, this wide country has in the course of so many vicissitudes been at length subjected to English Government, that government has never lost sight of the paramount duty of governing for the benefit of the people. It was no idle spirit of display which induced the House of Commons, after a laborious investigation of every detail in the conduct of the Indian Governments, to record their solemn testimony to "the "unremitting anxiety that has influenced the efforts of "those to whom the Government of our Indian possessions "has been consigned, to establish a system of administra-"tion best calculated to promote the confidence and con-"ciliate the feelings of the Native inhabitants, not less by "a respect to their own institutions than by the endeavour "gradually to engraft upon them such improvements as "might shield, under the safeguard of equal law, every "class of the people from the oppressions of power, and "communicate to them that sense of protection and assur-"ance of justice, which is the efficient spring of all public "prosperity and happiness."

While through the lapse of 70 years, from the year 1749 to the year 1820, the English Empire of India was being gained and consolidated, the legislature of England kept pace with its progress by its enactments for the better regulation of the Company and of the authority which it exercised. Up to the year 1773, the Company continued to conduct its affairs upon the basis of the Charter of 1698, as it had done up to the year 1749 when its career of conquest began. But, in the year 1773, a regulating Statute introduced many alterations of detail both in the internal constitution of the Company, and its method of governing the extensive countries it had acquired. This act was followed by others—the chief of which were one in 1784, first constituting a Board of Commissioners for the Affairs of India (commonly called the Board of Control)—and by three more, usually denominated *Charter Acts*, by which in the years 1793, 1813, and 1833, the Government of India by the East India Company was delegated to that body for the respective periods of 20 years by each act. All these acts, except the two last, continued to the Company their exclusive privileges of trade, but the act of 1813 first allowed a free and general participation in it by British public ; and the last act of 1833 abolished the right of trade by the East India Company altogether.

Such a revolution in the essential quality of the Company may seem to require some explanation. It must be observed that this body, from the time that it had become a ruling power over a populous and extensive Empire, acted in two capacities, each of which was in its nature totally distinct from the other. It was quite as competent to the British Parliament (and indeed this was at one time in its contemplation) to have constituted another entirely new Board of Governors to conduct the government of India, as to leave that authority in the hands of a Company of merchants, who made it equally their business to carry on their

trade. That this government was still continued in the hands of the Company was owing merely to considerations of policy, and to a conviction that the success and justice of its administration rendered that measure most expedient. The same policy had suggested the continuance of the exclusive privileges of trade, the expediency of which was supported on two grounds—first, that of contributing by the profits to the better maintenance of their growing political power; secondly, that of preventing a sudden influx of Englishmen, who with their free legal rights and love of enterprise, might probably embarrass a new and unsettled government, and at the same time lead to the oppression of the Natives. But in 1813, when the English sway in India was more firmly fixed—when equal laws had begun to be regularly administered—and the Native people had become more sensible of the true advantages of the British rule—these precautions were swept away with the most beneficial results to the public commerce of both countries. From this period the trade of the Company, like the trading of all Governments in competition with that of the public, not only dwindled gradually away, but was proved to be carried on at a manifest loss. The abolition, therefore, of all further trading by the governing body was a relief to the public, who gained consequently a greater share of the traffic. It was also a financial benefit to the Company itself, and a disincumbrance of a branch of affairs which detrimentally interfered with their more important duties, as a *Government*

SECTION VIII.

Of the Component Members of the East India Company—the Proprietors of Stock.

We must now consider the East India Company as a body temporally organized by the sovereign authority of the English nation, for the responsible government of an immense component portion of the whole undivided British Empire. This powerful body may be said to consist of the *Proprietors* of India Stock—(who may be properly deemed to constitute the aggregate Company)—*the Directors*, who being themselves Proprietors are by delegation of the whole mass appointed to manage and superintend its affairs, as their Representatives—and the *Board of Control*, which in the name of the King's executive authority exercises an appellate, and to some extent a directory, power of interference. The functions and duties of each of these bodies are copiously detailed in the Acts to which I have referred. Those of the Proprietors will occupy the remainder of this discourse. Those of the Directors, and of the Board of Control—who, together, constitute the supreme government of India, acting through the Governors and Council at each Presidency as their ministers—will form the subject of the next.

It will be convenient to consider of the qualifications and functions of the Proprietors, as extracted from all the regulating Charters and Statutes, under three heads—1st, the mode of their becoming Proprietors; 2ndly, the course by which they act; and 3rdly, the powers with which this body is invested.

I. The original objects of the Company having been

purely *commercial,* no restrictions were imposed on the capacity of every person to purchase shares in the common stock, and thereby to become a member of the Company as a Proprietor. Although the altered character of the Company might have warranted a change in the qualifications of its members, yet, owing to the very limited powers exercised by the Proprietors at large, it has never been deemed requisite to resort to any such measure. All persons whatever, who are of the age of 21 years, whether foreigners or natural born subjects of England, and without distinction of religion, profession, or even sex, are competent to become Proprietors by the purchase of a share or shares in the capital stock of the Company, which shares are saleable and transferable like any other property. This stock, which, as we have seen, was formerly the capital on which dividends were made on profits of trade, is now converted into a right to a certain amount of the surplus revenues of the Indian Empire, after all expences of its administration are defrayed. At the end of the term of 20 years, for which period the government of India is further entrusted to the Company by the last Charter Act of 1833, the Government of India may finally become a portion of the general government of the whole British Empire, and the stock of the Company, agreed to be reckoned at twelve millions sterling, is to become a charge on that general government.

A Proprietor of shares to a less amount than 1000£, though a member of the Company in some sense, is not clothed with any of the administrative powers of a Proprietor. If the owner of 500£ stock, he may be *present* at the meetings (or *General Courts* as those meetings are called) of Proprietors assembled for the transaction of business, although he cannot *vote*. A Proprietor under the age of 21 years, to whom any amount of stock may have devolved by inheritance, by bequest, or by marriage, can exercise none of his functions as such, until he becomes of

that age. A Proprietor of 1000£ stock has one vote at all elections to be made, and upon all questions to be decided, at the Courts of Proprietors: a Proprietor of 3000£ stock has two votes: a Proprietor of 6000£ has three votes: and a Proprietor of 10,000£ has four votes. No Proprietor can have more than four votes, whatever may be the amount of stock held by him. With a view to the prevention of combination to serve immediate occasions, no Proprietor is allowed to vote, unless he has been truly and really possessed of the requisite amount of stock for one whole year; except in the instances of such stock devolving by course of inheritance, or by bequest, or through marriage.

II.—All proceedings of the Proprietors are transacted by *General Courts;* at which the votes of a majority present decide; or at which a demand may be made by any nine Proprietors of an adjournment for the purpose of taking the personal votes of all duly qualified members who desire to attend and vote,—whereupon the majority of votes so taken decides.

These general Courts are summoned by the Directors, who may assemble them as often as they shall see cause, and who *must* assemble them at least four times in each year; namely, one in the month of December, another in March, another in June, and another in September. Should the Directors, or a majority of them, fail in so summoning any of these Courts, any three Directors may call together a Court in the next ensuing month. And, further, any nine of the Proprietors holding 1000£ stock may require, by a special demand, that a Court shall be summoned by the Directors within ten days.

When any demand is regularly made for taking the votes of the Proprietors, generally, on any question, or

when any election is to be made, the method of giving in and recording votes is by what is termed the *Ballot.* By that course each voter delivers in a paper containing his simple assent or dissent to any measure proposed, or the name of the candidate or candidates for whom he gives his suffrage; depositing the paper in one of several large glasses. Certain Directors are appointed by the Court to receive the votes into the glasses, and others to count out the votes and report the result. No balloting can commence at any earlier period than 24 hours after the adjournment of the Court for the purpose of a ballot being taken; nor can the ballot commence before noon, or be closed before six o'clock of the same day. The Court before separating adjourn to some day which it fixes as the day for balloting. By the last Charter Act of 1833. Proprietors are allowed to vote *at Elections* by their *attornies* producing a duly executed authority.

III.—The powers of the Proprietors are as follows: 1st. They form the constituent body out of whom the managing body, the Directors, are elected. As by the constitution of the Court of Directors six of its members must vacate their office every year, there must be an annual election, which is appointed for the second Wednesday of April, at which each Proprietor may give in his list of names of candidates not exceeding six. Every other vacancy, occurring by death, retirement, or removal, must be filled up within forty days after the vacancy declared; and ten days notice must be given by the Court of Directors of the day appointed for the election. The Proprietors have also the power of removing any Director from his office for just cause.—2nd. The Court of Proprietors is authorized to make regulations (termed *Bye-laws,*) as well with a view to the actual government of India, and of the Company's affairs generally, as with a view to the course and method of conducting business by the Court of Directors, and to the

proper demeanour of the individual Directors in the exercise of their offices. This power of making bye-laws would, therefore, on the face of it imply a supreme and practical authority in administering the affairs of the Company. In reality, however, it has no such effect. In the first place it gives no authority to make any regulation contrary to any provision of a Statute; and, since almost all the powers and authorities exercised by the Company are regulated by Statute, very little scope for discretionary legislation by this privilege remains. In the next place, these Statutes, having not only placed the entire administration of all matters relating to the *Civil* or *Military* Government, or to the *Revenue* of India, in the Court of Directors, but having also forbidden the revocation, suspension, or varying of any of this Court's orders relating to these subjects by any general Court of Proprietors, their practical authority is thereby almost nullified. And, lastly, so cumbrous a mode of executing the functions of a government, as this of proposing general laws, which would be sure to be opposed by the whole influence of the Directors, if aimed at the defeat of their measures, would never become efficient, even if any Proprietors could be found troublesome enough to attempt it. Nevertheless, this legislative authority is not without some practical and beneficial objects. By it the orderly course of transacting the business of the general Courts is provided; and a considerable power is still thereby retained in regard to the disposal of any portion of the revenues of the Company: insomuch that no sum beyond 600£ can at any time be voted by the Court of Directors by way of gratuity to any person, nor more than 200£ per annum by way of pension, or salary of a new office, unless with the sanction of two general Courts of Proprietors.—3rd. The Court of Proprietors are empowered to take into their consideration all new proposed Statutes, affecting the interests of the Company, and to discuss the merits of such laws, and to offer in the name of the whole Company, as well to Parliament as to the

Court of Directors, the opinions resolved on by the majority of a Court. In like manner this Court is empowered to call for information on any topics connected with the administration of affairs by the Court of Directors, and to pass resolutions of censure or approbation upon their measures, or to suggest others; although not competent to enforce the execution of the measures so suggested. With the same view to the public expression of the opinion of the body of Proprietors on the mode of administration of the Government by the Court of Directors, that Court is required to lay before the General Courts of Proprietors an annual account of the finances of the Company. It is in the exercise of this branch of their functions, and in the duty of elections, that the General Court of Proprietors is mainly engaged.

Upon a review of all these powers and functions of the body of Proprietors its true usefulness will appear to consist in its constituting a fair, an enlightened, and at the same time a popular, source of power, upon a system of representation; and in its supplying a solemn check on the conduct and measures pursued by those to whom the important executive duties of governing the vast East Indian Empire is entrusted.

DISCOURSE IV.

Of the Court of Directors, and Board of Control.

Of the Qualifications of the Individual Directors. Of the course by which the Directors act as a Court. Of the Powers of the Court of Directors. Of the Board of Control.

DISCOURSE IV.

Of the Court of Directors, and Board of Control.

SECTION I.

Of the qualifications of individual Directors.

I PROPOSE to treat of the constitution and quality of the Court of Directors under three several heads—First, the qualifications of the *individual Directors*, and the mode of their election: Second, the course in which they exercise their functions: Third, the powers with which the Court of Directors is invested.

First. Every person, to be eligible as a Director, must be a Proprietor of stock to the amount of 2000£, at least. This amount of the pecuniary qualification of a Director was first fixed by the Charter of 1698.

No Proprietors but such as are *English subjects* can be elected Directors. Every person born within *any part* of the dominions of the Crown of England is by his birth-right an English subject: consequently, every Native born within the territories of India under British Government is eligible as a Director, provided he is otherwise qualified. So also any foreigner may become entitled to all the rights of an Englishman, by being what is termed *naturalized* (that is having the rights of a natural born subject conferred upon him) by Act of Parliament. This qualification of being an

English subject, is not required in *Proprietors;* but the *Directors*, being invested with extensive political powers of a national character, ought obviously to be under the obligation of every public duty and feeling to uphold the national interests.

No person who has held office in India, and who shall have been declared by the Court of Directors to have pecuniary accounts unsettled with the Company, or against whom that Court shall have declared that a charge for misconduct is under consideration, is eligible to be a Director for the term of two years after his return to England, unless those accounts be sooner settled, or such charge sooner decided.

Every Director is required to take an oath of office within ten days after his election, before certain appointed authorities, otherwise his election becomes void. The oath is of an impressive character, and is to the following effect:

The Director swears to his being duly and truly qualified in respect to the amount of stock owned by him: he swears that, in case he is in any way interested in any dealings, contracts, or purchases, made by or with the Company, he will record the same previous to the discussion or the making of any treaty or negociation upon any subject, connected with such dealings, and withdraw, without giving any vote: he then proceeds to swear, "that he will not, directly or indi-"rectly, accept or take any perquisite, emolument, fee, pre-"sent, or reward, upon any account whatsoever (or any "promise or engagement for any) for or in respect of the ap-"pointment, or nomination, of any person to any place or "office in the gift of the Company, or of himself as a Direc-"tor, or for or on account of, or any ways relating to, any "other business or affairs of the Company:" he further swears, "that he will be faithful to the Company, and, ac-"cording to the best of his skill and understanding, give

"his best advice, counsel, and assistance for the support of "the good government of the Company :" and, lastly, he swears "that in the office of a Director of the Compa- "ny he will be indifferent and equal to all manner of per- "sons, and will in all things faithfully and honestly demean "himself, according to the best of his skill and understand- "ing."

Every Director, going beyond sea from England, must report to the Court such his intention; and, in case he continues absent more than one year, the Court of Directors must report his absence to the next General Court of Proprietors: who may, if they think fit, thereupon remove him from his office. This General Court has likewise power to remove (if they think fit) any Director who shall take any office of emolument under the King's government. And, further, any Director may be displaced by the proceedings of two General Courts; at the first of which the grounds of the motion for removal must be brought forward and recorded, and at the second of which the question for removal is to be decided by the votes of the Proprietors then present. All these liabilities to removal are created by the *Bye-laws* of the Company, passed by the General Courts of the Proprietors.

The number of Directors is twenty-four. Until the year 1773 all these Directors were chosen *annually*: but in that year a Statute provided that six only of the Directors should go out of office every year by rotation: consequently, no Director can serve for a longer period than four years. There must necessarily, therefore, be an annual election of six Directors in the room of those who go out by rotation; which election is appointed to take place on the second Wednesday of every April. Previously to that day two lists are printed of all Proprietors entitled to vote: one list is to be ready to be delivered to any Proprietor demanding

it five months before the day of the annual election ; and the other list, which must comprehend all Proprietors who have become such since the delivery of the last list, is to be ready fourteen days before the election. Every candidate must signify in writing to the Secretary of the Court his desire to become such, thirty-two days before the day of election ; and a list of all the candidates is published thirty days before the election. The mode of balloting for these annual candidates, and for others, as individual vacancies occur, has been explained in the last discourse. When an individual vacancy occurs, not in the course of annual rotation, the candidate elected in his place can only serve for the remainder of the period which his predecessor had to serve. Such a vacancy, when it occurs, must be published by the Court—a day for electing another to the office must be fixed within forty days of such declaration of the vacancy—and ten days public notice of the day of election must be given.

There is no restriction, however, against the same Directors who have gone out by rotation becoming candidates to succeed to the next annual vacancies—and, in practice, they always do become so, unless they choose voluntarily to retire from office. For experience having shewn the advantage of retaining the services of those who have previously become versed in the affairs of the Company, and who may at the time of their turn for vacating have become engaged in originating or carrying into effect some important measures, it proved an obvious policy to re-elect such Directors as soon as their legal competency to act was restored. Moreover, the individual Directors would not be so likely to pay such zealous attention to their duties, or to be so free from every bias to serve their private objects, if they apprehended that their authority might terminate within a short period by the changes and chances of a popular election. With a view to ensure such re-elec-

tion against any opposition of Proprietors who from caprice, or favor to other candidates, might be disposed to reject such old Members, without there existing any just cause for their removal, it has been for many years the custom for all the Directors to join in recommending the six late Members to the suffrages of the Proprietors, and in supporting them by their own votes, and those of all others whom they can influence, in case any rival candidates should appear. This recommendation of the old Members by the Directors is termed "Publishing the *house list*," and it never fails of its object. In practice, therefore, there are *thirty* Directors; six of whom by rotation vacate their office for one year—and it must be acknowledged that the original policy of this rule of rotation, which was that of affording to the constituents of the Directors a periodical *discretion* in the appointment of their representatives and rulers has been frustrated.

SECTION II.

Of the course by which the Directors act, as a Court.

Second. All the measures are transacted, directly or indirectly, through *Courts,* at which a simple majority decides on all questions and proceedings. But, by a bye-law of the General Court of Proprietors, every Director, whether present or not, may, within fourteen days after any measure resolved on, enter his dissent, with his reasons, on the records of the Court. No Court is competent to proceed on business, unless thirteen members attend. By a bye-law the Court of Directors is required to meet once at least in every week for the purposes of business. By another bye-law the Court of Directors annually appoint one of their members to be their *Chairman* (which is a term commonly used in England for the President of any assembly, as being the person occupying the principal seat) and another their Deputy Chairman for the ensuing year. The Deputy Chairman usually, though not as of course, succeeds to the office of Chairman for the next year. The duties of the Chairman (and in his absence of the Deputy Chairman) are, to govern the course of proceedings at all Courts and other meetings at which he presides —to bring forward ordinarily the various matters to be discussed—and to be the organ of personal conferences with the President and Board of Control, upon such affairs of the Company as require such communication. The Chairman is allowed, by his brother Directors a large proportionate influence in the disposal of appointments in the gift of the Court, and also in other matters.

For the greater facility of business the Court is divided

into several Committees. These Committees consist of different numbers, but the Chairman and Deputy Chairman are always two of their members. The principal committees are :—

1st. The Committee of Correspondence.

2nd. The Committee of Secrecy.

3rd. The Committee of Accounts.

4th. The Committee of Treasury.

It will be expedient to notice, in a general way, the quality of business delegated to each of these four principal committees. There are several other Committees of less consideration—such as that of *Lawsuits,* that of the *House,* that of the *Civil College* in England for the instruction of those nominated to become Civil Servants in India, that of the *Military Seminary* for the instruction of *Cadets,* that of the *Library,* and that of the *Military Fund* for retired officers, and their widows and families.

The Committee of *Correspondence* is the most important of all the Committees. It is their province to consider of and prepare all orders to be issued to the Governments of India in the Public, Political, Military, Revenue, Judicial, Law, and Ecclesiastical Departments. They receive all Despatches from the Governments of India in these Departments, and prepare replies. They receive all Petitions and Memorials addressed to the Court by individuals complaining of grievances, or requesting favors. To their consideration and report also are remitted most of the appointments of the great officers in the service of the Company.

The Committee of *Secrecy* is one which is expressly directed to be appointed by a Statute passed in the year 1784. The appointment of a Secret Committee was first made by the Court itself upon the commencement of those contests

with the French, which have been referred to in the preceding discourse. The object was that of considering all political matters arising, as between the Company and those nations which might be at war with the English, and as between the Company and the various Native States. Such matters as these were common to the consideration of the English Government and the Company—and it often became of the utmost importance that the ministers of the Crown, and certain organs of the Court of Directors, should communicate confidentially together—and that the subjects of their joint deliberations should be kept entirely secret, not only from the public, but even from the numerous members of the Court. The subjects of such deliberations were, commonly, projected wars, invasions, campaigns, treaties, acquisitions of territories, and alliances,— and all such projects were obviously liable to defeat or failure by being prematurely disclosed. The formation of such a Secret Committee was, therefore, naturally suggested by the important political position the Company gradually arrived at. It was rendered compulsory by the act passed in 1784, and was limited to three members only. In time of peace the duties of this Committee, although of eminent importance, are neither so numerous nor so urgent as in time of any war. The members and all the officers of the Committee are sworn to secrecy, and communicate only with the Board of Control.

The Committee of *Accounts* have the custody of the books in which the transfers of stock are registered, and the investigation of transfers and superintendence of such registry. They receive all bills drawn on the Company, and accept or not according to advices. They receive and report on all bills of charges, and manage the issuing of all the Company's bills of exchange and notes issued in England. They superintend the correspondence with the accountant's offices in the several Presidencies of India. They have the preparation of annual accounts of the Company's cash, of their stock, produce of revenues, sales, disbursements, receipts,

payments and debts, and an estimate of the same for the current year, to be laid before the Board of Control and before both Houses of Parliament, and also before the general Court of Proprietors.

The Committee of the *Treasury* provides for the payment of all dividends on stock, and interest on Company's bills and notes, and negociates the Company's loans. They superintend the communications between the Court and the Indian Governments in the departments of their general treasuries at each Presidency. They have the custody of the Company's seal, used in England for the purpose of executing the deeds and contracts of the Company, and see to the due affixing the seal on instruments to be executed. And, generally, they have the care of and dealing with the cash and bullion of the Company.

None of these Committees, it is to be observed, have any power *in themselves* ; unless any matters are by special orders of the Court directed to be carried into effect by them. Their only actual duties, in ordinary, are to *inquire* and *report*, and to *nominate* or *recommend* to certain appointments. These reports must be signed by the members ; and, unless they are laid before the Court itself within eight days after being so signed, they become null and void. It is rather, therefore, with a view to the requisite *information* of the whole body of the Court, and for the sake of obtaining the opinion of members who have made it their business to ascertain all details of the matter under discussion, that these Committees are appointed, than with any view of delegating that authority which can only be exercised by the Court itself, consisting of no less a number than thirteen of its members.

Copies of all the proceedings, resolutions, and orders of each Court must, within eight days after the holding of the

Court, be forwarded to the Board of Control. Copies, also, of all letters, advices, and dispatches received from India, which relate in any manner to its government, or to its revenues, or to the appropriation of them, must be laid before the Board of Control immediately after their receipt. I shall explain the objects of submitting all this information to the Board of Control, when I come to treat of the functions and authority of that body : in the meanwhile it will be sufficient to mention, that no orders or instructions whatever, relating to the government or revenues of India, can be sent out by the Court, until either approved by that Board, or such a course be taken by the Board, with a view to a revising or alteration of such dispatches, as will be hereafter noticed.

SECTION III.

Of the Powers of the Court of Directors.

Third. The powers of the Court of Directors over India, for as long as the Parliament of England have so determined, and subject to such control as has been, and will be further, detailed, are in their nature those of a supreme sovereign authority. The great distance, however, of this supreme governing body from the actual scene of their operations renders it necessary that a system of subordinate local Governments should be organized—to which Governments very large discretionary powers are given; some by the general instructions and orders of the Court, and some by the Statutes of the English legislature itself. But, whatever discretionary powers are exercised by the chief or other local Governments of India, they are all, nevertheless, subject to such interference, sanction, revision, or reversal, as the Court in its paramount authority may judge expedient.

By the terms *of supreme sovereign authority* is not to be understood a pure arbitrary power, without any constitutional rules of action, and without law. The Court is created by a law; and it governs according to laws. The law which has constituted its plan of government is, like that of the law of the English constitution itself, a law to be traced to the general will of the people, expressed in this instance by a Statute of the Imperial Parliament, which is the organ of the whole English nation. The laws, according to which the Court governs, are either such Statutes (which this Court cannot repeal or disobey)—or they are the ancient unaltered local laws of India, or laws

made by themselves or their local Governments of India, all of which the Court must conform to, until they through their Indian Government, or the Indian Government itself, shall alter or annul them. By saying, therefore, *that the nature* of the Court's authority is *supreme* is meant, that it has the *legislative power*, by which it may dictate what shall be law, and what shall not—with the exception of such laws as its own constitution is dependent upon, and such as the Parliament of the united nation, by which itself was created, shall have laid down for its guidance. Moreover, the Court unites in itself the *executive*, as well as the legislative, authorities of Government—there being no separate branch of this Court (as is the case with the supreme authority of England) entrusted with the *administration* of that authority according to those express laws which may have been enacted, or according to sound discretion in all cases not provided for by express laws. It is true, indeed, that, by Statute, the Governor General of India in Council is entrusted with authority to make general laws; but its laws may be annulled by the Court of Directors; and the laws which that Court may require to be enacted must be passed by the Government in India. That Government, therefore, is in all respects subordinate, and not in itself supreme in any sense; although the Government of the Governor General in Council is usually *called* the supreme Government of India, for the sake of distinction. The regulated power, also, of the Board of Control to reject, or alter, the orders and instructions of this Court in matters of government, certainly *qualifies* its political supremacy: but, inasmuch as the Board is not empowered to *originate* any measures or orders, its authority operates but as *a check;* and is not altogether subversive of the supreme character of the Court's powers of Government subject to the restrictions I have noticed—subject to the express Statutes of the British Parliament—and subject to the interference of the Board of Control,

by the specially appointed course, and to a limited extent—the laws and administrative powers of the Court of Directors, so long as its constitution continues, have absolute force over the property, liberty, and lives of all who dwell within the Company's territories in India.

To the Court of Directors, then, is delegated the power of issuing such orders and directions, to be carried into effect by the local authorities of India, and of framing such laws to be observed in the conduct of Government, and in the administration of justice, as to them may be expedient. Upon submitting such measures to the consideration of the Board of Control, and receiving notice of its disapproval, or of its revisal, of them, they are authorized to make such representations and explanations as they may think fit respecting the matters upon which any disapprobation has been expressed, or variations suggested, by the Board; which representations, the Board is required to give attention to, and then finally to decide upon. If any difference of opinion shall arise, as to whether the subject-matter of the Board's disapproval, or alteration, has relation to the *Government* or *Revenues* of India (upon which subjects only the Board is entitled to exercise its powers of control) or as to whether their orders or directions are in any other respect beyond the scope of their legal authority, the Court is empowered to submit any such question to the adjudication of certain of the judges of England.

By the last Charter Act of 1833, the Court has been required to draw up, and submit both to Parliament and to the Board of Control, a body of standing *general rules* for the guidance of the Supreme Government of India in the superintendence and administration of the affairs of the country. These general rules have reference to the *mode* of exercising the powers entrusted to the local Governments, and to the expedient course to be adopted in *giving publicity to the laws* of the country. This is one of the many precau-

tions devised for ensuring *some systematic plan* in conducting the administration of the Indian Governments and for imposing limits upon the discretion even of the executive branch of those governments, as far as a due regard to their efficiency would allow of.

The Governor General of India (as will be in a future discourse explained) has, under authority of a Statute, certain powers of acting, in matters entrusted to the administration of the governments of India, by his own sole authority, without any previous communication with any of the Councils of India. To the Court of Directors, however, is reserved the power of suspending and restoring the liberty of exercising this special privilege. All *individual* power and discretion is contrary to the spirit of the constitutional laws of England, which in all political measures aims at securing the advantages of free discussion and union of opinions. Although, therefore, emergencies may arise, during the absence of the Governor General from his Council, calling for immediate resolutions—yet, so jealous is the English Government of all arbitrary authority, that it provides against all defects of a personal quality, and supplies the means of denying to the rashness of one man a power which may be safely reposed for a time in the cautious discretion of another.

The Court of Directors has but very limited power in granting away the funds and revenues of the Company, for the mere benefit of individual persons. No pecuniary grants can be made of any gratuity beyond 600£, or of any pension, or of any new or increased salary, beyond 200£ per annum, without the consent, not only of the Board of Control, but also of two general Courts of Proprietors.

All the chief and most important offices held in India, both in the Civil and Military Departments of its Government, are in the appointment of the Court of Directors. To

some of these offices the Court appoints directly and expressly—as regards others (which form a vast proportion of the appointments held in India) the Court selects two classes of persons, out of which classes only can individuals be chosen to fill such offices. One of these classes is that of the Civil Servants, each of whom is originally appointed by the Court under the name of a *Writer*—the other is that of the Military servants, who enter the service of the Company under the denomination of *Cadets*. Of the military servants, who also hold commissions in India as military officers of the Queen, and who rise in rank and are governed in a similar way to that in which all other portions of the English army are governed, I have no occasion to make further mention. Upon the quality of the Civil Service it may appear to the purpose to offer, presently, a few observations.

The Court of Directors appoints expressly to the office of the Governor General of India, to that of all the members of his Council (save one), to that of Governor of each of the other Presidencies of India, to that of all members of those Governors' Councils, to that of Commander-in-Chief of all the military forces of India, to that of Commander-in-Chief of the forces of the Presidencies of Madras and Bombay, and to some other minor offices which it is unnecessary to enumerate. The functions of one of the Councillors of the Supreme Government of India are confined exclusively to the *legislative* department of that government.

The appointments to the office of the Governor General of India, to that of the Governor of each of the Presidencies of India, to that of the Commander-in-Chief of India, to that of the other Commanders-in-Chief, and to that of the legislative Member of the Supreme Government, are neither of them valid or complete until approved of by the Crown.

This provision of the British legislature supplies another link in the chain by which the destinies of India are bound up with those of the whole English Empire. The Court is necessarily compelled, through the risk of rejection, to select persons to fill these high political stations whose principles of government, and whose qualifications, are satisfactory to those who administer the general affairs of the English Government. These ministers of the Crown can, themselves, hold their authority no longer than while their own measures are satisfactory to the British Parliament, as being conducive to the national strength and prosperity. And thus is secured, as far as human designs can perhaps accomplish, an union of councils and of policy through all gradations of authority, from the supreme organ of the state down to the humblest official entrusted with a share of political power.

The Court of Directors, can, at their own discretion, and without assigning any other cause than such as they may see fit to specify remove from their offices either the Governor General, or any Governor, or Commander-in-Chief, or Member of Council; and in like manner may suspend, or dismiss altogether, from their service any of their Civil or Military Servants. There is, however, one case of exception to this power of removal provided by the last Charter Act of 1833—which is, that when, upon any vacancy of any office in the appointment of the Court, that Court shall make default in appointing within the time prefixed by the Act, (which is two months from the time of the vacancy being notified to the Court) and the Crown shall consequently, according to the course by that act detailed, make the appointment to any such vacant office, then the Court shall not have the right of removing the party so appointed, not by themselves, but by the Crown, and the power of removal of this party shall be solely in the Crown.

The exclusive power of this Court to appoint all persons

who are to be engaged in the civil administration of the Government of India, is open to serious objections. As my object is to explain, and not merely to set forth, the constitution and quality of the Company and of its system of government, I shall proceed to examine and comment upon these objections.

So long as the Company pursued purely, or mainly, their objects of *trade*, it was no proper concern of the rest of the public at large, whom the organs of the Company's Government employed as the servants to superintend or manage their affairs. Such appointments necessarily fell to the private patronage of those members of the Company, to whom were entrusted the Company's private interests; and there was a sufficient security in the common interests of all that such a patronage would be employed to the best advantage of all.

But, when the Company no longer had the care of any private interests—when their trade was totally abandoned, and the *political government of the country*, and the *public concerns of the people* were their sole occupation;—the case become very different. It must be obvious that the interests of the whole nation were those alone to be considered, as well in the system of making appointments, as in every other mode of exercising their functions—and that in the appointment to all public offices the just and *most efficient administration of the government* should be exclusively had in view. In the system, however, of appointing individuals to the Civil Service the *private patronage* and *interests* of *certain members of the Company* is had in view, as well as those of the nation at large—and it remains to enquire whether that system does not operate prejudicially to the government of the country.

The original appointments to the Service are given to

youths between the ages of 16 and 21. The qualities which will eventually characterize a person's manhood cannot be ascertained with much accuracy at that period of life, though existing abilities to a certain extent may be pronounced upon. But, whatever the Civil Servant may afterwards prove, in point of capacity, his qualification to be employed in the administration of the Indian Government has been definitively settled. Unless absolutely deficient in intellect, he can hardly be rejected from employment at any period of his after life—but if the greatest genius, in the full strength of manhood, should be a candidate for employment, he could not be admitted if he had not originally been appointed to the Service in his youth; and the other must be placed in office in preference.

The Court require, before granting an appointment to the Service, that the probationer should pass through a certain course of education, or at least evince his acquirements by passing successfully through a scholastic examination. The scale of competency is, however, not beyond what a youth of ordinary intellects, with ordinary exertion, by the age of 18 may attain. As no one can be a candidate but such as are nominated by the Court, no amount of talents or attainments could obtain for their possessor the liberty of devoting them to the service of the Company, without such nomination. The Court secures the Government of India against the absolute incompetency of the Civil Servant at the time of his appointment; but their objects of private patronage would be interfered with, if they made provisions to secure to their service the most competent servants that could be obtained, in preference to those nominated by themselves—and, therefore, no such provisions are made. Indeed, it may be said that to some degree this power of patronage operates to the preference of a comparatively inferior nominee. For, if a nomination be secured to any party, and he can give it to one of several whom he desires to

advance in the world, he might with reason propose to the ablest youth to make his way in some ordinary occupation or profession in which he was likely to gain distinction; and he might reasonably give the appointment to the Civil Service to another, who, though not *incompetent* to that employment, might have less chance from his capacity to succeed in any other.

If these were all the objections to the system of appointment to the Civil Service, there might appear scarcely a sufficient inducement to notice them; for it must be allowed that, out of so large a number of well educated youths, a considerable supply is made of talents for the exigencies of the Indian Governments. But these are not the only objections. Those who thus enter the service are usually such in whose progress their patrons take a personal interest. They come out with an acknowledged *claim* to be, not only put in some office of emolument, but to be advanced according to their seniority to the higher and more important offices in the administration. They are presumed to be provided for during life with an ample income, and also with the means, by a prudent course of management, of realizing a competent, or perhaps a large, fortune. The Governments of India would, in justice, manifest much caution in exercising a preference of one servant over another on the mere score of superior abilities—they would be still more cautious in rejecting from important employment any party on the ground of absolute incompetency. The total exclusion from any lucrative employment, merely on the ground of absolute deficiency of intellect, or of industry, or of acquirements, is a circumstance almost unheard of. The raising to high office of a junior, altogether out of his class, and over the heads of a large proportion of his seniors, on account of eminently superior qualifications for the public service, is equally unknown. Such measures as these would be universally consi-

dered, as well by the body of the Civil Servants, as by the Court itself, to savour of injustice. The Governments of India cannot direct an unlimited discretion towards selecting those who are to administer the chief affairs of the state, according to the test of their superior ability to fill their posts for the public benefit. Their choice must be chiefly influenced, if not guided, by a deference to the private interests, and to the claims by seniority, of individuals. They can exercise some discretion in excluding the incompetent, but very little in promoting the most meritorious.

It may be justly apprehended that the effect of this system is to mortify emulation, in proportion as it diminishes hope. The aim of a virtuous and elevated mind is, not the mere attainment of a high station, but the attainment of it through pre-eminent qualifications. The possession of a distinguished office is chiefly valuable to a man of superior talents and honorable principles, as affording him the means of performing some conspicuous public services. But such qualifications can only be acquired, and such services can only be rendered, by laborious exertion—and the only incitement to exertion is the just expectation of reward. In proportion, therefore, as the system of advancement in the Civil Service holds out equal expectations to the negligent, the ignorant, and the weak-minded, and to the able and industrious, must it be reasonably expected that there will be a deficiency of that exertion on which high qualifications for public duties depend. In that proportion has it a tendency to lower the level of the Civil Service, and reduce all its members to that same level. As far as birth, and manners, liberal education, and the prevalence of honorable principles can serve to raise that level, it must be allowed that it is a high one. The majority of its members, appealing to such well founded credit, and also to the exalted merits of several among them whose abilities and public virtues have gained them an illustrious name in

the history of this country, will probably deny the justice of these remarks, or disregard them. Those, however, who feel a consciousness of superior talents—who turn with a noble ambition for the enlarged means of serving the interests of their country—and who toil to attain eminence by improving those qualities by which they may adorn it--such men will regret that they can only advance with the throng; they will be sensible that the true dignity and reputation of their service is impaired by the obstacles which oppose the rise of its most meritorious members; and they will scarce think justice is duly observed towards the people in neglecting the very best means of securing an efficient administration of their government. They will reflect with pride on that character for integrity and general talent, which has been justly earned by the body to which they belong; but they will not mistake these merits for those of the most exalted quality which can be displayed in the government of a vast Empire. They will appreciate the excellencies of those of their body, who by their conspicuous public services have done honor to the first offices of the state; but they will distinguish between those services which may have been accomplished in spite of a faulty system, and the merits of the system itself.

If no other consideration is likely to lead, ere long, to some change in the mode of selection to civil employments, the growing intelligence and qualification for civil duties of the Native community must necessarily produce it. Hitherto this question has attracted little concern amongst them; and, however important in a general and political point of view, it has been one of little moment as respects their immediate individual interests. Until the Empire of India was consolidated, and its plan of government thoroughly brought into operation, and firmly settled, it would have been not only useless, but disastrous, to have attempted these great and beneficial objects through the Natives themselves,

to whom the domination of the English was new, and by whom their principles of government were scarcely in any degree understood. But the condition and the feelings of the Native people have greatly altered. As internal tranquillity, the security of possessions, social intercourse, and useful knowledge has increased—so has advanced the attachment of the people to the British rule, and their natural and laudable desire to share in the honors, as well as the labours, cf public employment. These are sentiments which must be respected. These are wishes which cannot be disappointed. The access of Natives to power and office is acknowledged to be just on principle, and expedient upon sound policy. In the spirit of these generous views the authorities, both in England and in India, are forward in holding out these encouraging prospects to the Native community. The author of these pages contributes his humble labours to promote so great and so just a national cause For it must ever be borne in mind that it is by such intellectual exertion as that which engages the Native reader in his present task—it is by the extent and quality of his information, as well as by his ability, his incorrupt integrity, and his love of truth—that the Native candidate must justify his claim for public employment. But, when qualifications and virtues such as these shall mark his character and pretensions, I know not the office, however eminent for honor, and however important for usefulness, which may not (as I earnestly hope it will) be open to Native ambition.

Before quitting this examination of the powers of the Court of Directors, I would desire to advert to one other particular, which is rather among the duties than the powers of that Court: namely, that of receiving and pronouncing upon petitions. All persons, of whatever rank or condition, living under their Government are at liberty to address themselves directly to the Court itself upon any subject within that Court's authority to redress. It is, however,

a rule observed by that Court to require that every such petition stating any grievance or cause of complaint should be addressed to them through the Government of the Presidency. The reason of this is, that the Government may have an opportunity, before the consideration of the Court is given to the subject, of making all expedient inquiry on the spot into the truth and grounds of the statement made, and of affording whatever explanation the case may appear to call for. Without such information from the Government, or some competent authority, it must be obvious that no reliance can safely be placed on any representation from an interested party. It is another rule that the Court never interferes in matters upon which the ordinary tribunals of justice can afford redress. The propriety of this rule is clear. These tribunals are expressly appointed for the purposes of deciding on all rights claimed, or crimes charged. They are clothed with all necessary powers—and their course of investigation is expressly regulated with view to the attainment of truth, through a fair hearing of both sides. The interference of any other authority would be an arbitrary violation of the laws of the country, and the substitution of a discretionary and inadequate trial of rights or of wrongs, for that course of trial which has been appointed by law for no other reason than because it appears to be the best. But, still, there are many wrongs and oppressions which are beyond the reach of the laws; there are modes of doing injustice by evading the law; and there are injuries which powerful men are able to inflict in defiance of the law. It is of importance, therefore, that this door for relief should be widely opened; and that, from the highest political magistrate to the lowest, every person in authority should be aware that he is responsible for every act of his power, even to the meanest individual who should be aggrieved by it.

SECTION IV.

Of the Board of Control.

I am now to advert to that body, whose office is appropriately designated by its title, namely, the *Board of Control.* I will first shew how it is constituted, and will then notice its functions.

The authority of this Board was first created by a Statute passed in the year 1784. It took its rise out of long and violent discussions in the British Parliament on the whole conduct of the Company's Government. A strong disposition prevailed amongst a powerful party in the legislature to new-model the system of the Indian Government altogether, and to repose the administration of it in some new constituted body. But, although that proposal was after much contest rejected, yet a very large majority, both in the general Court of Proprietors and in the Parliament, ultimately concurred in the expediency of some measure by which all the governing functionaries of the Company might be made more responsible to superior authority, by which their proceedings might be checked and superintended, and by which the administration of the Indian portion of the British Empire might be more effectually united with, and made dependent upon, the supreme sovereign power of the state.

Accordingly, this Board, with its important duties, and composed of some of the highest officers engaged in conducting the executive department of the English Government, was appointed. Its powers were further regulated by a Charter Act which passed in 1793. Additional powers were de-

legated by the subsequent Charter Act of 1813: and the constitution and functions of the Board were finally adjusted and settled by the last Charter Act of 1833. The President of this Board, is always, in consideration of his high office, selected by the Crown as one of those Ministers of state, to whose management (as far as depends upon the executive Government of England) the administration of all the affairs of the British Empire is entrusted. He receives a salary for the performance of his duties. The other members of the Board are—the Prime Minister, the Minister of the Finances, and most of the other Ministers of the Crown, (as standing members by virtue of their offices as such Ministers) together with such other members as the Crown may think fit to appoint. None of these latter members receive any salary.

Every member, before entering on the duties of his office, must take the following oath:

He "faithfully promises and swears that, as a Commis-
" sioner or member of the Board for the affairs of India, he
" will give his best advice and assistance for the good go-
" vernment of the British possessions in India, and the due
" administration of the revenues of the same, according to
" law; and will execute the several powers and trusts re-
" posed in him according to the best of his skill and judg-
" ment, without favor or affection, prejudice or malice, to
" any person whatever."

The meeting of any two or more members constitutes a Board qualified to act. The President, and in his absence the member next in the order of nomination in the list of the commissioners who happens to be present, is entitled to a casting vote, in all cases of equal divisions. The signature of one of their Secretaries to their proceedings gives them formal validity.

The functions of this Board are, generally, "to superin-"tend, direct, and control, all acts, operations, and con-"cerns of the Company, which in any manner relate to, or "concern, the Government or Revenues of the territories "of India." With a view to these comprehensive objects the Board may have access to all records and papers of the Company, and can call for all requisite statements and information. The general Court of Proprietors are likewise required to submit all their proceedings; and the Court of Directors are required, as we have seen, to lay before the Board all advices and dispatches which they receive from India, and all orders and instructions which they propose to send out to India (except such as belong to a class which the Board may have exempted from such previous reference) relating to its Government or Revenues. The Board are thereupon empowered, within two months, to approve or disapprove of any orders or dispatches proposed to be sent out, or to revise or alter them. In case of any such alterations, the Board must state in writing their reasons at large for such alterations with a view to the Court of Director's making (within fourteen days) such representations as they think fit with respect to them. After considering these representations (if any shall be made) the Board's decision is to be final. The Board may, further, call upon the Court to frame and transmit to them instructions for dispatches to be sent to India on any subject connected with its Government or Revenues, and if the Court shall neglect for fourteen days to forward to the Board for their consideration such dispatches to be sent out, the Board may itself frame the dispatches and instructions, and require them to be sent out; unless, upon any representations of the Court, the Board such think fit to alter them. The Board may also send any instructions or orders connected with the making war or peace, or with negociations with foreign Powers or Native Princes, and which they may consider to require secrecy, to the Secret Committee of the Court; and those dis-

patches are to be forwarded at once by that Committee, without any disclosure in any quarter.

And, lastly, this Board has authority to disallow, and cause to be repealed, all laws made by the supreme Government of India; and in like manner to disallow of any of those *general rules* which the Court of Directors are required to frame, for the course of procedure by the supreme Government in the exercise of its powers, and in promulgating the laws it may pass.

The experience of fifty years has so manifested the wisdom with which the establishment of this controlling authority was planned, and the advantages which have resulted through its means, that the expediency of its continuance for twenty years longer, as provided by the last Charter Act, seems to have been admitted by common consent. It is impossible to point out under any civilized Government, or perhaps to devise, an institution more calculated to ensure justice and consistency in all political measures, and the protection of the people from every species of oppression. The Board is so constituted as that with all its extensive powers, as well in mere matters of detail, as in concerns of national moment, it acts nevertheless under constant and effectual responsibility. It acts in immediate communication with the whole body of the Queen's Ministers; and all its proceedings, in common with their's, are under the continual review and superintendence of the British Parliament. The President and Members of it are not appointed for life, and their possession of office depends, not only on the quality of their own individual conduct in office, but on that of the general policy of the Ministry with whom they are united. They have no certain private interest to serve; they have no permanency of power to render them reckless. Both interest and power are dependant on the honor of their reputation, and

the efficiency of their talents. Subject, however, to responsibilities like these, their authority over all persons connected with the Indian Governments and over all acts and proceedings, done, or proposed in the administration of them, is complete and supreme. They can command the full knowledge of every thing: they can displace all Indian functionaries, from the Governor General himself to the humblest political servant of the Company: they can revise, change, and (acting through the Court of Directors) even direct, every measure in the civil, military, or financial departments of the Indian state. As every thing connected with these objects can be done by them, so can nothing be done without them. Still, with all these vast powers, necessary for the unobstructed discharge of its great and innumerable duties, the Board is not an *active*, but strictly a superintending and *controlling* body. It cannot correspond *directly* with the functionaries and offices engaged in carrying on the administration of the Indian Governments. Its organization is not calculated for transacting the extensive business entrusted to the ordinary management of the Court. Its occupation is to examine into every proceeding, and to interfere only as occasion may seem to demand. Limited as the practical exercise of its functions is, its powers are unbounded as regards the accomplishment of its appropriate duties—the checking that which is wrong, the preserving that which is right, and the advancing that which is expedient.

DISCOURSE V.

Of the Governments in India.

PRELIMINARY Observations on the subject of this Discourse. History of the Formation and course of the English Government in India previous to the first regulating Act of 1773. Of the Progress of the English Governments in India, from the year 1773 until the passing of the last Charter Act of 1833. Of the manner in which the Governments of India are constituted, and of what members these Governments are composed. Of the Method and course in which the Governments of India exercise their Functions. Of the Powers exercised by the Governments of India: and, first, of the Superintending and Controlling powers of the Supreme Government. Of the History and nature of the Legislative powers of the Supreme Government. Of other peculiar powers of the Supreme Government. Of the powers exercised by the Subordinate Governments of India. Reflections on the quality of the System of Government in India; and notices of some defects.

DISCOURSE V.

Of the Governments in India.

SECTION I.

Preliminary Observations on the subject of this Discourse.

NO subject of the English Empire, whether Native or British born, who is settled in India, can be altogether indifferent to the nature and quality of the Government under which he lives—none but those of the most abject condition can rest content in utter ignorance of its scheme —none who aim at a superior station in life, to be useful in the state, and to reap the fruits of a liberal education, can rationally indulge such hopes, without an acquaintance with its course and plan, even in its details.

It might be expected, therefore, that a discourse, which apparently professes to open briefly and clearly to the mind of a Native, or an unlearned reader, an exposition of the political plan of power according to which the Governments in India are conducted, would prove an attractive source of interesting information to the general body of the Indian public, and be consulted with avidity by all ranks of the people to whom books have become the means of knowledge. And, if a just comprehension of the frame and scheme of the Indian Governments, which has been built up under the counsels of a succession of the ablest men

who have ever engaged in the weighty task of forming and of ruling a state, and of men who under the heaviest responsibility to their countrymen guided themselves by those principles of government which best conduce to the permanent prosperity of the people—if a just comprehension of the scheme of the Indian Governments, thus constructed, could be imparted in a few plain words, suited to the general capacity of even the humbler class of readers, there could scarcely be a national benefit in the power of an individual to perform which could be so worthy of his ambition. It might serve to diffuse a spirit of attachment to a system of rule which has beyond all others promoted the well-being of the people of this land, and to excite a common interest in its preservation. It might serve at least to protect them from those discontents which so often spring from erroneous views of a country's political condition, and are so often founded on the assertion of public grievances which have never in fact existed. For those who are loudest in upbraiding their Government and its measures are not always the most competent to expose what is wrong. These reproaches more commonly flow from such as are unwilling to learn, and incapable to teach. Those, who from accurate inquiry and sound knowledge are induced to cast blame on real evils, are generally as remarkable for their moderation, as for their firmness and earnestness of purpose. They desire amendment rather than overthrow, and amelioration rather than change.

But an exposition of the system and plan upon which the local Governments of India are framed are beyond the scope of a few plain words, or of a brief popular discourse. The student who would gain a competent acquaintance with the mighty machinery, whereby the rights, the peace, and the security of a hundred millions of subjects are maintained in regulated order, must bring to the inquiry a greater store of knowledge than a few hours reading can supply.

For—not to mention that course of education through which alone the meaning and application of the appropriate terms used in discussions of this sort can be learnt—he who would rightly comprehend the nature of the Indian Governments, and judge of their character, must have directed his reflective attention to the circumstances under which they arose, and to the principles on which they are founded. He should know something of the origin and objects of political government ; he should have acquired some information of the former history and condition of this country ; he should have traced and understood the progress of the British power ; he should have gained some conception of that constitutional form of the British Government with which the system and course of the Indian Governments are bound up ; and, lastly, he should have inquired in what way the peculiar structure of these Governments has conformed *to the necessity of events*, and the *state of the Indian community*.

These are the considerations which have induced me to prepare the reader of this present discourse by others which are preliminary to that which may probably be his more immediate concern : nor can I commend the impatience of that reader who, instead of regarding this and my previous discourses as one consistent whole, shall attempt, as it were, to snatch from the few ensuing pages some vague and general notion of the plan and character of the Governments in India, without the requisite power of discrimination, and without a just understanding even of the language and expressions employed. The knowledge, indeed, of things as they exist, and of effects as they appear, is more or less needful, and can never be useless : as he who knows what is the shape and structure of the earth, or the course of the planets and the system of the universe, or has become proficient in any of the arts of life, will have furnished his mind with something that may be necessary to him in his occupations, or

somewhat that may be a source of pleasure, as well in his private reflections as in his intercourse with society. But such knowledge, as it is imperfect in itself, so is it, comparatively, unfruitful in improvement. The mind may still be left involved in perplexities, errors, and superstitions. That knowledge only is certain or complete which explains effects by their *causes,* measures by their *reasons,* and appearances by their *origin :* as he can know little of the astronomical system of the world, who knows not by what power the planets move in their courses, and in what way light and darkness, cold and heat, revisit the earth.

And thus, also, a thorough knowledge of the political constitution of the Government in India is not to be acquired by merely ascertaining who are the local ruling authorities, under what legislative regulations they are invested with their powers, and by what course they exercise their functions. He who would gain a certain and complete knowledge of them must inquire into the history, the origin, the objects, and the principles of these institutions—comparing them with such as they have superseded, and examining them by their conformity to those general principles of government which tend most to the welfare of a nation. It is such knowledge alone that can give ability to judge of the merits or demerits of the existing system of government, or a capacity to serve the interests of the state in upholding that which is right, amending that which is faulty, and improving that which is defective.

Any endeavour to spread political instruction of this quality among *the bulk of the people* must be vain. But it is not only a desirable, and a feasible, but a most essential object that it should be disseminated amongst those classes who have leisure and ambition to attain a liberal education, and out of whom are to be chosen such as aspire to fill offices and stations in the service of their country. It is

from the influence, and talents, and information of such as these that the masses of the population must form their opinions ; and, in proportion to the correctness and accuracy of political knowledge among the influential orders, is the probability of national peace. For civil distractions grow not so much out of public grievances as out of the misrepresentations of the ignorant and uninformed : neither is there a greater security against the perversions of designing men than in the sound intelligence of those whose common interest it is to oppose them.

SECTION II.

History of the Formation and course of the English Government in India previous to the first regulating Act of 1773.

In tracing the history of that scheme of political power which, in the result, has been framed for the local Government of India, the reader will have gathered some information from the two last discourses which it is impossible to avoid partially repeating.

During the first sixty years of the existence of the East India Company, after their incorporation by the Charter of Queen Elizabeth, dated in the year 1600, they exercised no authority which could be properly denominated a *Government*, either in England or at any of their settlements formed in India. By that Charter, and another granted by King James 1st, in 1609, to a similar purport, they were invested with such powers and privileges as have been already noticed as characteristic of *corporations*; and they were also empowered to make regulations and by-laws, agreeable to the laws of England, " for their good government," and to impose punishments by fine and imprisonment on offenders against those by-laws. There is reason to believe that an authority of this indefinite nature, expressed in such general terms, was abused contrary to law; especially by those at a distance. But, as those Charters invested not the Company, or any of their servants, with the power of administering justice, appointing Judges, or holding Courts, we can only consider these powers of regulating, and of inflicting punishment, as the means of arranging among

themselves the course by which they should pursue the object of their institution, namely, their trade—under the same obligation, nevertheless, which bound all other subjects, of appealing to the ordinary tribunals of justice to enforce the observance of those arrangements by all who were members of the Company.

The peculiar nature of the settlements which the Company gradually formed in India—the extent of territories permanently occupied, and of the population inhabiting them, both British and Native, all of whom were their own immediate servants—and the distance of these settlements from the mother-country, rendered necessary the establishment of some political government, directed to other objects than the mere management of commercial affairs. The warlike contests both by sea and land, not only with the Portuguese and the Dutch, but also with the Native powers, had led to the Company's raising and maintaining Military bodies, and to the erection of Forts. And, although their settlements were originally founded for the mere purpose of facilitating their means of trade, and for the convenient residence of their commercial servants; and, although these settlements were properly held under the laws and government of those Native powers by whom they were originally granted—not as the colonial establishments of an independent people—but as the private property of sojourners owing obedience to the supreme authority of the rulers in whose territories they were situate—yet, this position gradually ceased to be recognized, practically, by the Company and their servants. In claiming to be governed by *their own laws*, and to set up *tribunals of their own* for settling disputed rights, and punishing crimes—in supporting the treaties and right which had been granted to them *by force of arms*—in *fortifying themselves* within their territories—they acted in all respects as an independent nation. The exercise of such authorities as these is quite inconsistent with the condition of *subjects* of any state which should permit it.

But, although such was the position which had been assumed by the Company and their servants in India, it was not until the year 1661, that these territories were *formally* treated by the Supreme Government of England as if they had become a component part of the British Empire, and that some course of rule was provided for the government of the people residing therein, as though they were a portion of the subjects of the British Crown. In that year the Company were authorized, by a Charter of King Charles 2d, *to appoint Governors* to govern the Plantations, Forts, and Factories which they had established in India. These Governors, with their Council, were empowered to *exercise both civil and criminal jurisdiction, according to the laws of England.* They were further empowered to fortify any places within their limits of trade; to raise military and naval forces; and to *make war and peace* with surrounding nations. By a subsequent Charter, granted by the same King in 1683, and by another granted by King James 2d, in 1686, the Company were authorized to erect Courts of Justice, and to appoint a person learned in the civil law and two merchants to be judges of them; and also to appoint Courts for the trial of offences committed at sea.

Such powers as these comprise all the essential functions of a political government. The Charters conferring them do not, however, attempt to provide any *specific plan,* or lay down any *detailed rules,* for the guidance of those in authority who were to exercise these powers. The very general, comprehensive, and indefinite language of them, necessarily, therefore, gave loose to much arbitrary discretion, both as regards the extent of these functions of government, and as regards the mode of administering them. In particular, no express sanction was given for *passing laws;* although at the same time the exercise of legislative authority could not be considered as clearly prohibited. If any

such legislative power was granted, it would be difficult to determine what were to be its limits—and no course of drawing up or enacting laws was provided. Again; these Charters are by no means clear, as regards the *parties who are to be subject* to their civil and criminal jurisdiction—though they would seem to imply that all persons in the service of the Company, or inhabiting their settlements, were to become so. But, if this jurisdiction was to be exercised over *all* such, indiscriminately, and *according to the laws of England*—there was an evident injustice in such a course, as applied to the Natives, and an evident impossibility of making all the laws of England operative in these foreign settlements, as respects the English themselves. By the general rules of the English law the Natives ought to be governed according to their own ancient laws, until altered by the Supreme Government under which they became subjected: and, in foreign countries, Englishmen ought to be ruled only by such laws as were *applicable* to their new condition. But it is impossible to decide, upon reference to these Charters, how far such general rules of the English law were, or were not, intended to be annulled by them. Besides this, the Governors appointed for those settlements, and those appointed to administer justices within them (although provision had been made by the two last Charters for one of the Judges to be learned in the civil law) were men altogether unlearned in the laws of England, if they were not in truth totally ignorant of them. We cannot wonder therefore, that the history of the proceedings of these local governments should proclaim very great abuses in the exercise of the authority delegated—and great deviations from the just laws of England. And it may be accounted for, although it cannot be defended, that one of the Governors of the Company in England should have written out to a Governor whom he had by his influence appointed over Bombay, "that he expected *his orders* were to "be his rules of government, and not the laws of England."

In these progressive steps towards political power and the foundation of various colonies in India, the Company, it will be recollected, began by establishing various small factories, consisting of warehouses for their goods and residences for their servants, which factories were subsequently converted into fortified towns and enlarged by the grant of adjacent territory. The first factory established was that of Surat in 1612. Over this settlement was placed, under the general authority granted to the Company by the Charter of Elizabeth a *President*, and certain persons to assist him with their advice. This body was denominated, accordingly, *the President and Council;* and the settlement at which they assembled came to be termed the *Presidency*, as soon as other factories were founded and placed under their control. Under the Presidency of Surat were placed all the other factories as they were gradually formed in the Western part of India—namely, Cambay, Ahmedabad, Gogo, and Calicut. A factory, which soon after 1600 had been established on the Island of Java, subsequently in 1625 formed a subordinate factory at Masulipatam, and afterwards in 1638 another at Madras; where a Fort was immediately built under the name of Fort St. George. But, in 1653, as well Masulipatam, as another factory at Hooghly, were placed under the Government of a separate President and Council at Fort St. George, which accordingly became the second Presidency constituted in India.

After the Island of Bombay was granted to the Company by Charles 2d in 1668, the Presidency of Surat was abolished, and transferred to Bombay This city was in 1687, declared by the Company to be the chief seat of Government in India: all the settlements in the country, including the Presidency of Fort St. George, the factories already mentioned in the Western portion of India, and the subsequently acquired factories in Bengal, of Pipley, Cossimbazar, and Balasore, and of Vizagapatam, and Fort St. David,

on the Coromandel Coast, being made subordinate to the President and Council of Bombay. This general and controlling authority of the Presidency of Bombay does not, however, appear to have continued long to be actually exercised. In 1699, the Company obtained the towns of Calcutta (where a Fort called Fort William was built) and Govindpore; and in 1715, in consequence of the grants of many commercial privileges, and of a considerable district round Calcutta, by the Mogul Emperor, that city was erected into a third independent Presidency under the name of the Presidency of Fort William, having government over all the Company's possessions in Bengal. From this period the three Presidencies of Bombay, Fort St. George, and Fort William conducted their course of government for many years independently of each other, although in mutual communication; until, in the progress of events, the Government of Bengal, as will hereafter be noticed, became vested with a general and controlling power over the other Presidencies, as well as with its own independent authority over the immediate Presidency of Bengal itself.

In thus tracing the history of the establishment of the three Governments of India at the three Presidencies of Bombay, Madras, and Calcutta, we find that, from the year 1600 to 1653, there existed but one Government and Presidency in India, which was that of Surat; and that its only political powers were derived from the general terms of the Charter of Queen Elizabeth. After the foundation of the Government and Presidency of Madras in 1653, these two Presidencies still governed the districts and factories placed under the respective control by virtue of the same Charter until 1661, when their political powers were increased by the Charter of Charles 2nd. Under these Charters, and those subsequently granted in 1683 and 1686, these two Presidencies (that of Surat having in the mean time been transferred to Bombay) continued to conduct their govern-

ment until the establishment of the Government and Presidency of Calcutta in 1715. Previous to the foundation of this last Presidency another Charter had been granted in 1698 to a new rival Company, in which Charter was incorporated not only similar political powers and privileges, in greater detail, to those which by the above noticed Charters had been granted to the original Company, but also some more particular rules for the conduct of their government in India. As this new Company, however, did not possess any territories or settlements in India, the Charter granted to them had no effect in regard to regulating the Governments of India, until by the union of the two Companies under this same Charter, and by the surrender of the old Company of all its own previous Charters, this last Charter of 1698 was brought into operation. The union was not effected until the year 1709; and within six years afterwards the third Presidency of Calcutta was established. From the time, therefore, that the union of the two great Companies was thoroughly accomplished, all the functions and powers of government granted to the united Company came to be exercised at these three Presidencies—each of them having its respective subordinate factories—each of them under the administration of a President and Council—and all of them directing their proceedings according to the provisions of the Charter of 1698, and of the Statutes authorizing and confirming those provisions.

The clauses of this Charter of 1698, are for the most part directed to the formation of the new Company, to the framing rules for its constitution and self-government, and to prescribing the course by which functionaries are to be appointed for conducting its affairs. Indeed it is upon the bases of this Charter that the functions and authorities of the Court of Directors and of the Proprietors, as exercised at this day, are founded. At the same time the Charter delegated to the new Company, in a more specific manner

than the former Charters had conferred upon the original Company, the commercial privileges and political powers with which they were to be vested. It conferred the sole right of trade. It empowered them to erect and hold and govern Forts, and appoint Governors over territories. It authorized them to make War and Peace with surrounding countries. It conceded the important power of raising Military and Naval forces. But the power of *legislation* was restricted within definite and narrow limits —and consisted barely in providing by-laws for regulating their trade, and the conduct of the Company's servants and others engaged in it ; which by-laws could only extend to the infliction of reasonable imprisonments, or fines, for the breach of them, and were required not to be repugnant to the principles of the English laws. The *judicial jurisdiction* to be exercised under this Charter was also made definite, and greatly restricted. The Courts to be erected in India were to have jurisdiction only in certain matters of minor criminality, and in civil suits connected with trade, or arising out of injuries and trespasses. And no persons were contemplated as subject to the jurisdiction of these Courts, except such as proceeded to India or engaged in trading thereto, or were members of the Company, or engaged directly or indirectly in their service.

On the whole, therefore, this Charter must be considered as limiting and diminishing the political powers exercised by the original Company, and as in some degree tending to subvert that *national* position of the English in India, which it was the apparent policy of the former Charters to further and uphold. But, it is to be recollected; that this Charter of 1698 was framed with the view of establishing a totally new Company, and a new course of trade. For this new Company was without any territories, or Forts, or factories in India—and, however necessary might appear the political powers conferred on it, with a

view to their gradually attaining the permanent means of trade, yet *trading*, and not *colonizing*, was the main purpose of incorporating the new Company, and the total abolition of the old Company was contemplated. It might be expected, indeed, when the two Companies became united, and all the territorial acquisitions became added to the united capital of both Companies, that the strength and extent of their political powers would have been increased, with a view to the permanent maintenance of that national position which had previously been founded by the original Company in India. But such a policy seems for the time to have been abandoned. Trade, and not colonization—and still less conquest—seems to have been again regarded as the only true and useful object of the English connection with India. Moreover, the powers and authority exercised and abused under the old Charters would ill endure the scrutiny of the British Parliament, under whose control the trade with India now came to be placed. These reasons may appear sufficient to account for the future political Government of India having thus become regulated under the sole and restrictive Charter of 1698, upon the union of the two Companies being effected, and to have suggested the surrender by the old Company of those Charters under which they had advanced so far as a political state in India.

Under the provisions of this Charter of 1698, the Company continued to govern their possessions and servants in India until the year 1773. Various Statutes passed in the mean while, continuing from time to time all the rights and powers granted by this Charter. Two Charters for the better regulation of the course of administering justice were also granted by the King; one by George 1st, in 1726, and another by George 2nd, in 1753. But none of these Statutes or Charters introduced any essential alterations in the political powers of the Company, or in their mode of exercising them. The vast conquests, however, made by

the Company from the year 1749 up to the year 1765, naturally called for the attention and interference of the British Government. Two temporary Statutes were accordingly passed in the years 1767 and 1769, for securing to the Company the possession and government of the newly conquered territories. But in the year I773, the first great regulating Statute was enacted for the systematic government of the British possessions in India.

Up to this period the Governments at each Presidency consisted of a President and his Council. The members of the Council to each Government was unlimited; and they sometimes amounted to ten, and sometimes to but two. There was no prescribed course of appointing them; and still less was there any regular scheme laid down under which they should conduct their government. No powers whatever of legislation had ever been delegated to those local Governments. There were no Judges expressly appointed by the King, and properly qualified; to administer justice in his name among his subjects; according to the laws of England; and as well between the Company itself and others, as between the various persons living under their rule. The *Dewanny*, or the right of collecting the Revenues of the provinces of Bengal, which had been conferred in 1765 upon the Company by the Mogul Emperor, were of so uncertain and indefinite a nature, both as regarded political power and judicial authority, that it was impossible to say to what the Dewanny rights extended, or under what limitations they were bound.

The Governments had no immediate connection with the King's government in England, nor were the Governors in India dependant in any manner on the King's authority. In short the provisions of the early Charters and Statutes, then in operation, were only adapted for the conduct of trading concerns, and the regulation of good order at commercial factories established in foreign lands.

SECTION III.

Of the Progress of the English Governments of India, from the year 1773 until the passing of the last Charter Act of 1833.

The Act of 1773 was the first to establish a *Governor General* and Council over Bengal; who were also to exercise a controlling direction over the Governments of the other two Presidencies. The first members of this Government were named in the Act itself—and it was provided that the succeeding members to be appointed by the Company (during the next five years) should have the approbation of the King. It prescribed the course for conducting their proceedings, and laid down in general terms the extent of their political and legislative powers. It provides for the transmission to the King's government in England copies of all their proceedings. It enabled the King to grant a new Charter for the administration of justice; and prescribed a very ample extent of jurisdiction to be exercised by the new Court, the nature of the law to be administered, and the quality of the Judges, as professors of the English law, who were to preside in it. It further enacted many provisions for the personal conduct of the members of Government, and of other high functionaries, with a view to the repression of wrong and misgovernment.

Extensive and beneficial as this Act was, in first providing a systematic and detailed scheme for the Government of British India, and the administration of justice therein—it proved eminently defective when brought into operation. It happened that the first members of this general government differed widely upon the policy to be pursued in pub-

lic measures. The countries over which they ruled were not only in an unsettled state ; but, as no regular method of government had been constituted in them, and no settled laws prevailed, it was not easy to say what was legal and according to order, and what was otherwise—what was unjust and oppressive, and what was consistent with the general welfare of the people. This naturally gave rise to disputes as to the legality, as well as propriety, of the acts of Government—and such disputes were aggravated by others which put in question the mode of conducting the authority and proceedings of the Government, and the relative powers of the Governor and of the different members. The Act, which had not been prepared in anticipation of the rigorous scrutiny of such disputants, nor, indeed, with any mature investigation of the condition of the country, could little afford a solution to such difficulties as those. A still greater embarrassment, however, arose to all regular and effective government under this Act, from the misconceptions which prevailed as to the extent of jurisdiction with which the Court (now first designated the Supreme Court of Judicature) was invested—and, as the King's Judges were entirely independent of the local Government, a collision between those two authorities on such a subject necessarily produced confusion throughout all its affairs.

Into the distraction of those times, both in the administration of the government and of the law, it is not expedient in this discourse to enter. It is sufficient to say that they gave occasion to several remedial Statutes, under which the Government of British India was better regulated, and the causes for dissensions gradually removed. In the year 1781, two Acts passed renewing for ten years, and three year's subsequent notice, all the chartered rights and privileges heretofore granted to the Company—regulating the mode of appointing the Governor General and his Counsellors—defining more specifically their powers

and responsibilities, and exempting their official acts from the jurisdiction of the Supreme Court—increasing their powers of legislation, with a view to the better administration of justice in the Provincial Courts, free from all interference of the Supreme Court—and regulating and limiting the judicial authority and mode of proceeding by the latter Court. In the year 1784, the Statute was enacted which first established the Board of Control: and by the same Statute various further important provisions were made for regulating the course of government in India. The supreme Government, as well as the subordinate Governments were, each, to consist of a President and three Counsellors; of whom the President of Bengal was denominated, as before, the Governor General, and the other Presidents Governors. One Commander-in-Chief of all the forces in India was to be appointed, and a subordinate Commander-in-Chief of the forces of each of the minor Presidencies—and these Commanders-in-Chief (when appointed to be members in Council also) were to rank next to the Governor General and Governors, respectively; but were never, unless specially so appointed, to succeed to the actual government as Governor General or Governor. Other provisions of this Statute it will be unnecessary to notice here, as they were either re-enacted, or modified, or repealed by subsequent Acts to which I shall have occasion to advert.

In the year 1793, the time had nearly arrived when (upon a three year's notice previously given) the chartered powers, rights, and privileges of the Company, which, in the year 1781, had been renewed for ten years and three year's notice, would expire. It was then resolved by the British legislature to renew all these rights, and delegate the Government of India to the Company for the period of twenty years. Upon this occasion the first of those comprehensive acts passed, which from the extended duration of the grant, and the specific detail of the

provisions for the constitution of the Company itself, and for the scheme of their Government in India, came to be denominated the *Charter Acts* for India. This Act of 1793 is formed upon a review of all the royal Charters and Statutes which had passed from time to time—and, adopting or modifying almost the whole of them, it embodied within itself such an exposition of all the Company's rights, powers, and privileges, and of the system upon which the local Governments were to be conducted, as left but little to be searched out by references to the older enactments.

Under this first Charter act, which rather consolidated and amended the many previous Statutes for the Government of India, than introduced any essential change in its plan, the country continued to be governed until the year 1813, when it was made to expire. In the mean while, however, other Statutes passed directed to some further improvements in its administration, without altering its general scheme. In particular, the mode of administering justice was further regulated, and the constitution and judicial powers of the Courts of Justice at Madras and Bombay were enlarged; and the former was in 1799, made a Supreme Court with similar jurisdiction to that of the Supreme Court at Calcutta. The legislative powers, also, which had previously been confined to the Supreme Government, were extended to the subordinate Governments of the minor Presidencies. But, in 1813, the second great Charter act passed granting all existing rights, powers, and privileges to the Company for a further term of twenty years; and occasion was again taken to modify the course of government in some respects, though without introducing any very essential alterations. From that period until the passing of the last Charter act of 1833, which has delegated the administration of India to the Company for another term of twenty years, the political powers of the

local Governments were exercised with scarce any variation whatever, according to the rules prescribed in the two Charter acts of 1793 and 1813, and in those other less comprehensive Statutes whose provisions were not modified, or repealed by, or incorporated in these two more general Acts.

This last Charter act of 1833 has introduced several very important modifications in the scheme and course of the Governments in India—at the same time it has left the general plan of Government, as regulated by the two former Charter acts and several other Statutes, and also a great number of the specific provisions of all those Statutes, in full operation. The plan and course of the Indian Governments has, therefore, to be extracted from an investigation and exposition of all the existing provisions enacted by these various laws. It would certainly be very desirable that all the details of this scheme of local Government should be consolidated into one well arranged Statute. The mind necessarily becomes confused by a reference to so large a mass of various laws, proposed at distant periods, under every change of political affairs, by various-minded persons, and often under the influence of peculiar and temporary circumstances. So many enactments for the self same objects, and often for the purpose of mere modifications, but occasionally interspersing new and important provisions, has given rise to numerous repetitions—and, what is worse, to many variations in the language of clauses where no difference of meaning is to be surmised. It would be a tedious, and probably an unprofitable, task to conduct the Native reader through an examination of the purport and tendency of these numerous Statutes, with a view to trace historically the various new provisions, and subsequent alterations from time to time made. The chief and most comprehensive of them have already been noticed for the more accurate guidance of the

learned student who may have occasion to refer to them. The general reader will perhaps be satisfied by a summary and systematic account of the scheme and quality of the local Governments of India, as derived from a review of the whole mass of the laws upon which those governments are founded.

SECTION IV.

Of the manner in which the Governments of India are constituted, and of what members these Governments are composed.

It may be convenient for the purposes of this further inquiry to shew: First, in what manner the Governments of India are constituted, and of what members composed; Secondly, by what course, and according to what method they exercise their functions; and Thirdly, with what powers these Governments are respectively invested.

First. Of these governments, that of Bengal is termed *Supreme.* It governs the Presidency of Bengal, and exercises a controlling and directory authority over the other Presidencies of India, which are now three; namely, Madras (or Fort St. George), Bombay, and Agra, a Presidency first constituted by the last Charter act of 1833. We will first consider the constitution of the Supreme Government.

The Supreme Government consists of a Governor General and four *ordinary* Members of the Supreme Council, besides the Commander-in-Chief of all the Company's forces in India, *in case* the Court of Directors shall think fit to appoint him a Member; and who thereupon becomes an *extraordinary* Member of the Supreme Council. As this body (except in one particular instance to be hereafter noticed) acts in union, and by a majority, this Supreme Government is termed that of "*The Governor General* "*of India in Council.*"

The appointment of all the members of this Government

is in the Court of Directors. But the appointment of the Governor General is subject to the approbation of the Crown, transmitted through the President of the Board of Control. The effect of this provision is that the high functionary appointed to this important post—the most distinguished of any throughout the colonial dominions of England—is always selected from those elevated and enlightened individuals who at once enjoy the gracious favor of the Monarch, the confidence of the executive Government of England, and a well founded reputation for superior political talents in the estimation of the Court of Directors.

The Commander-in-Chief of the Company's forces in India, when appointed to be an extraordinary Member of the Supreme Council, ranks next to the Governor General. His appointment as *Commander-in-Chief*, like that of the Governor General, depends on the approval of the Crown; for the vast authority entrusted to this officer of the command and government of an army composed of no less than two hundred thousand soldiers, is of too important and confidential a nature to be reposed in the absolute choice of any body of subjects whatever, independently of the Crown. But his post of an extraordinary *Member of the Supreme Council* does not require the same confirmation. The Commander-in-Chief is precluded from ever being at the head of the government of the *Presidency of Bengal*, or from ever succeeding to any *absolute vacancy* of the *Governor Generalship of India* (unless expressly appointed to succeed provisionally in case of either of such vacancies)—but, in case of the temporary absence of the Governor General from Calcutta, the Governor General in Council may nominate him, or any other Member of the Supreme Council, to execute his functions of Governor General, during such his temporary absence for the purpose of visiting any part of India, under the designation of the *President in Council*.

Three of the four *ordinary* Members of the Supreme Council are appointed by the Court of Directors out of the Civil or Military servants of the Company, of ten years' standing in their service at least; and their appointment does not require the approbation of the Crown. But the fourth ordinary Member of the Supreme Council is appointed by the Court merely for the purpose of assisting at the Councils held for the purpose of *passing Laws;* and he cannot interfere or vote in any other business of Government. Accordingly, this Member is selected from among the eminent lawyers of England: and, with a view to the better securing that extent of professional ability (of which the Ministers of the Crown are better qualified, probably, to judge than the Court of Directors) this member's appointment must be confirmed by the approval of the Crown.

In case of any vacancy, by death, resignation, or otherwise, in either of the offices of Governor General or of any of the Members of his Council, the Court may appoint, *Provisionally*, any Member to succeed; so as such successor as Governor General, or fourth Member of his Council, has the previous approbation of the Crown. And, in case no such provisional appointee happens to be on the spot to succeed as Governor General upon any such vacancy, then the senior *ordinary* Member is to succeed and act until a regular appointment is made of a permanent successor. In case no such provisional appointee is on the spot to succeed to the office of an ordinary member, then the Governor General in Council may select from out of the Civil or Military servants any person of ten years' standing to succeed and act until a regular appointment is made by the Court. A vacancy in either of these appointments may occur, not only by death, or a formal resignation, but also by a voluntary departure of either of these functionaries with a view to return to England, or by their being recalled by the Crown, or by the Court of Directors.

A *temporary* vacancy of the office, as well of Governor General as of the Governor of the Presidency may likewise arise by the Governor General himself, suspending his own functions. For it is provided, that the Governor General in Council can, at any time when he thinks it expedient, appoint any one of the *ordinary* Members of Council to be *Deputy Governor* of the Presidency of Bengal; and, on any occasion of his absence from the seat of Government to visit any part of India, he is at liberty, by *a law or regulation* to be expressly passed for that purpose, to appoint *any one* of the Members of his Council to act as Governor General of India during such his absence, under the name of President in Council. But such President in Council cannot pass any *laws*, without the assent in writing of the Governor General himself to each such law.

Such is the constitution and composition of the *Supreme Government of India*, under all the emergencies which can arise. Let us now look to the constitution of the *subordinate Governments* of the several other Presidencies of Madras, Bombay, and Agra.

The constitution of these several Governments is the same in all. They each consist of a Governor and *three* Councillors only; and are styled "The Governor in Council of Fort St. George," "Bombay," and "Agra," respectively. But the Court of Directors is authorized to reduce the number of Councillors, or to suspend the appointment of any Councillors whatever, at either of these Presidencies—an authority which has been exercised, as regards Agra—in which case the Governor of such Presidency acts alone, with all the powers of a Governor in Council.

When, however, the minor Government consists (as is the case at Madras and Bombay) of a Governor and three Councillors, the Commander-in-Chief of the forces of

the Presidency *may be* one of these Councillors. The others (or all of them, in case the Commander-in-Chief is not appointed to be one) must be chosen from the *civil* servants only of the respective Presidencies, of twelve year's standing at least.

The Governor is appointed by the Court, subject to the approbation of the Crown: but the other three Councillors need not have such approval; although the Commander-in-Chief, *as such*, must. When appointed to the Council he ranks next to the Governor; but he can in no case of vacancy succeed to the office of Governor unless specially appointed provisionally so to succeed. Should the Commander-in-Chief of all the forces in India happen to come into one of the minor Presidencies of India on duty, he supersedes and takes the place of the Commander-in-Chief of the forces of that Presidency, in Council—if the latter happens to a member of Council.

Vacancies in the office of Governor, or of any members of Council, may occur by the same means as in the case of the Supreme Government. And the Court may, in like manner, appoint provisionally to any such vacancies; subject, in the case of the Governors, to the approval of the Crown. In case no such provisional appointee as Governor is on the spot, the senior *civil* member is to succeed; and, in case no such provisional appointee is on the spot as member in Council, the Governor in Council may select any Civil servant, who has attained the rank of *Senior Merchant*, to act until a permanent successor is appointed. The Governor of a minor Presidency has no authority to appoint any Deputy Governor, or other President of his Council.

There are two other cases to be mentioned in which persons may become, or act as, members of either of the Governments in India. One is the case of a default made by

the Court of Directors in appointing a successor, within two months after they have notice of a vacancy of the office of the Governor General, or of any member of either of the Governments—upon which default the authority to appoint to any such vacant office falls to the Crown ; and the Court loses also the power of revoking such appointment, or of re-calling the party so appointed by the Crown. The other case is upon occasion of the illness or absence of any member of Council, so as he should be prevented from attending any particular Council held, and the Governor should desire the advice of a *full* council upon any particular measure then to be considered of. In this case the Governor is at liberty to call in the Provisional Member, or, in case there be none, any Civil Servant of the rank of a Senior Merchant, from time to time, to attend and assist at the Council Board on such occasion.

SECTION V.

Of the course and Method by which the Governments of India exercise their Functions.

Secondly, we have to consider by what course, and according to what method, these Governments exercise their functions: which course and method is the same, as well in the Supreme Government as in the subordinate Governments.

All the acts and proceedings of the Governments are done, either directly or indirectly, at meetings of the members, termed *Councils.* Their legal validity depends altogether upon their being done *in Council*—and, accordingly, the form of all their orders and resolutions runs in the name of "The Governor in Council." And it is required, in testification of these acts and proceedings having been done by the Council Board, that they should be signed by one of the Secretaries of Government.

But, although such must be the quality of their acts, that they must all emanate from, or be confirmed by, some Council Board—yet the members of Government are not restricted to any particular formal course of transacting the current business of Government; provided only that this essential qualification of all their acts and proceedings be observed, namely, that in the result they all proceed from the Governor *in Council.* Accordingly, it is usual that propositions and communications be circulated in writing amongst each other, preparatory to any orders or resolutions being discussed or passed at the Council Board; and a great portion of the business for the consideration of Government, arising out of the numerous re-

ports, applications, references, and addresses to Government from the various functionaries of the state, as well as from private individuals, are in like manner circulated amongst the members of Government by the Secretaries and other officers of Government, previous to any debate or decision come to upon them in open Council.

Neither is there any particular form, according to which the sentiments of each member of the Government may be expressed, or according to which the final resolution or decision of the Government is to be framed. For each member can either verbally at the Council Board, or by his signature in favor of or against any resolution, or by any representation at large in writing (commonly termed his *Minute*) freely, and according to his own method, deliver his sentiments for the consideration of the Board —and in the more important matters (especially when there is a difference of opinion) these minutes are usually recorded, not only with a view to the more deliberate and mature attention of the other members of the Government, but with a view to the final notice of the authorities at home. Indeed, it may truly be said, that these minutes are often recorded for the instruction of posterity For among them are to be found a vast number of documents (many of which have been printed) so abounding in maxims of political wisdom, and in information upon all topics connected with the history and prosperity of this country, that they are scarcely surpassed by the public records of any nation. Those who have had access to these excellent works can with difficulty repress the expression of their admiration of the genius and character of those distinguished men—the truest benefactors of this land —who have thus recorded their eminent services to their country and to mankind : and it seems a kind of duty imposed on the writer of these pages to offer to the veneration of his readers the names of Clive, of Warren Hastings, of

Cornwallis, of Wellesley, of Lord Hastings, of Munro, of Fullerton, of Elphinstone, of Malcolm, and of Bentinck; although their reputation cannot be increased by any notice from him.

The Council Board is competent to act when the Governor General or Governor and one Member is present, in all matters, except in the passing of laws; for which latter purpose the Governor General and *three ordinary* members of the Council of India at least must be present.

It is the privilege of the Governor General or Governor, at every Council, *first* to propose any measure to be discussed and disposed of—and, afterwards, any of the other Councillors may propose other subjects for consideration. The Governor can, however, by his own sole authority adjourn, if he thinks fit, the further discussion of any such matter proposed by a Councillor to a future day; but not beyond forty-eight hours, nor more than twice. The objects of these regulations are two—first, to enable the Governor General or Governor to bring forward such questions without delay which he himself judges of the most urgent importance, and to secure timely and calm attention to propositions of doubtful policy—and secondly, to preclude the Governor by his own sole authority from preventing the free introduction, and the certain and prompt disposal, of such questions as any member of his Council may deem worthy of the Government's attention.

All measures are passed by common consent, or else by a majority of votes—and, in case of an equal division, the Governors have a casting vote. If, however, any measure be proposed which, in the opinion of the Governor General or Governor, is of essential importance to the interests of the Company, or to the safety and tranquillity of the state, and expedient either to be carried or to be wholly rejected, and

the whole Council present shall dissent from the opinion of the Governor—in this case, a discretionary authority is given to the Governor to carry or reject the measure by his own sole decision. This independent and discretionary authority has been given in consequence of many disputes and contentions between the Governors and their respective Councils which formerly occurred, and which, though usually ending in favor of the Governor's policy and authority, yet greatly impaired the vigour and dispatch of the public measures. But, as, on the other hand, such a power might tend to arbitrary Government, and weaken the independence and weight of the Council, it has been guarded with cautious restrictions. And, first, the question must be one of the highest emergency and importance, affecting in the greatest degree the public welfare. Secondly, all the members of Government must state their respective reasons in writing—so that it will appear whether, on the part of the Council, their opposition is founded on any factious, or personal, or other than a sincere public ground; and, on the part of the Governor, whether his decision is actuated by sound judgment, or at least a regard for the public weal: and all parties will have the best means of mature deliberation on the proposed measure. Thirdly, it is expressly declared by Statute that the Governor, and he alone, is to be responsible for the measure so carried, or for the negative so passed against the measure proposed. Fourthly, this sole authority does not extend to any act which it was not legally in the power of the Governor in conjunction with his Council to carry. Fifthly, three especial cases are excluded from any such sole decision; namely, 1st, any act in their *judicial* capacity; as when adjudicating as an Appellate Court upon any matter of right or of crime—2ndly, the making, or repealing any *law* or *regulation*—or 3rdly, the imposing any *tax* or *duty*. These two last acts of authority can, however (under the provisions of the last Charter act of 1833) only be exercised by the

Governor General of India in Council; and, consequently, the restrictions upon them do not any longer apply to the Governors of the subordinate Presidencies. It is further to be observed, that this power in the Governor of acting by his sole discretion is not confided to any Governor *acting* during any temporary vacancy; and that the Court of Directors are authorized to suspend the exercise of this sole discretion, as often, and for as long a time, as they think fit.

It remains only to note, under this head, that the Governor General of India in Council may appoint from time to time any place in India at which the Council of India may assemble; and, when they shall happen to assemble within either of the minor Presidencies, the Governor of that Presidency becomes an extraordinary member of the Council of India. The Governor General may also, when absent from Bengal, and without his Council attending him, issue his orders and instructions to the Governments of either of the Presidencies, or to any of the officers or servants serving under them; and which orders and instructions are to be obeyed in the same manner as if they had issued from the Governor General in Council. He is directed, however, immediately to send copies of his orders, so issued on his own sole authority to any such officers or servants, to the Governments to which such officers or servants belong; and also to send copies of such orders and instructions, whether sent to the Governments or to such officers, to the Court of Directors; and to state his reasons and inducements for issuing them. And he alone is to be responsible for all acts done under such orders or instructions.

SECTION VI.

Of the Powers exercised by the Governments of India: and, first, of the Superintending and Controlling powers of the Supreme Government.

Thirdly. In the third place we will consider of the *functions and powers* with which the several local Governments in India are invested, With this view we will first notice those of the Supreme Government of India—and, next, those of the several other Governments, including that of the Presidency of Bengal. For, although the particular government of the Presidency of Bengal is administered by the self-same functionaries who preside over the Supreme Government of India, and these functionaries cannot consequently act under the control of any local superior, yet, when the members of the Supreme Government act merely as the Governor and Council of the particular Presidency of Bengal, they exercise precisely the same powers and functions in respect of the Government of that Presidency (with the exception of any reference or obedience to a superior local authority) as those which the Governors in Council exercise over the other subordinate Presidencies.

The powers of the Supreme Government of India in the control and direction of the subordinate Governments were originally much more limited than they are at present. Those which were first assigned to the Government of Bengal, by the Statute passed in the year 1773, were confined to interferences in those matters only which affected *the relations of the other Presidencies with other Native states.* The Government of Bengal was to have "the power of

"superintending and controlling the Governments" of the other Presidencies, *in so far* that it should not be lawful for them to make war or peace, or any treaty with any Indian State, without the *previous* consent of the Bengal Government; except in emergent cases, when there might not be time to communicate with the Supreme Government. And it was further provided that the subordinate Governments should constantly transmit to that Government advice of all their transactions in matters relating to "the Government, revenues, or interests of the Company."

But another Statute, which passed eleven years afterwards, in the year 1784, considerably increased, and at the same time more specially defined, these superior powers of the Bengal Government. It was by that Act provided, that the Bengal Government should "superintend, control, and *direct*" the Governments of the other Presidencies "in all points which relate to *any transactions*" with the Native powers, or to war or peace, or to *the application* of the *revenues or* of the *forces* of these Presidencies *in time of war*; and also in all points specially referred by the Court of Directors to such controlling power. And the subordinate Governments were directed to obey *all* orders, whether they might judge them to be on the above points or not, unless they contradicted express orders from the Court of Directors, themselves, which had not come to the knowledge of the Supreme Government. These contradictory orders they were to communicate to the Bengal Government, if occasion arose, who would thereupon issue their further instructions. It was further provided, that no subordinate Government should declare war or peace, or make any treaty with another state, except in pursuance of an express order from the Supreme Government—unless in cases of sudden emergency.

It was soon after considered that even these powers of

superintendence, control, and direction were not sufficient—for, by the first great Charter act which passed in 1793, this power of control and direction was extended, not only to all transactions with other states, the making war and peace, and all treaties—but also, to the *collection* and application of the revenues of the other Governments, and to the employment of their forces at these Presidencies, *without any restriction as to time of war*—and the Act further provided, in general terms, that the Bengal Government should exercise these powers in all points which related "to "the civil or military government of those Presidencies."

It would be difficult to say what particular measures of government were to be considered as excluded from the control and direction of the Supreme Government constituted by the comprehensive terms of this Statute. But that *some* acts and powers of the subordinate Governments were *intended* still to be exempted from the interference of the Supreme Government seems clear from this—that provision is again made by this Act for the obedience of the subordinate Governments, although a doubt should arise whether the orders of the Supreme Government had reference to *those points* under its superintendence. We may, perhaps, justly consider all the acts of the subordinate Governments in the current administration of justice according to the laws of the country and the regulations of Government, and all their appointments to offices, as exempt from this controlling interference.

However this may be, the consciousness of the Supreme Government that its controlling powers were under some limitations, not exactly defined, begat a caution and a reserve in interfering with the ordinary course of Government in the minor Presidencies, and directed that interference chiefly, if not altogether, to those affairs more specifically noticed in the Statutes which have been referred to—

namely, the negociations and treaties with Native states, the declarations of war, or the making of peace, and the employment of the military forces as the general interests of the Indian Empire might suggest. In almost all other respects a general latitude and discretion was reposed in the subordinate Governments to carry on their administration according to the course provided by the laws ; and subject only to the control and direction of the Home Authorities of the Court of Directors and the Board of Control.

The next Charter act, of the year 1813, made no change in the relative authorities of the supreme and subordinate Governments ; and for the course of forty years, from the year 1793 to the year 1833, this limited and guarded measure of superintendence and direction continued to be observed by the Government of Bengal. But in the latter year a policy seems to have prevailed with the Ministers of England of better uniting and consolidating the Governments of India, and of giving greater consistency and uniformity to all the public measures in the administration of the Indian Empire. It is probable, also, that it was judged expedient to remove at once all doubt and difficulty as to the extent of the controlling powers of the Supreme Government, by at least *enabling* it to direct its interference towards all political objects whatever, which, consistently with the powers confided to the local Governments of India, could occupy the attention of the newly arranged Supreme Council of India. The last Charter act of 1833, accordingly provides, in the fullest terms, that the Supreme Council of India shall have the superintendence, direction, and control of the *whole* civil and military Government of India, generally—" with " full power to superintend and control the Governors and " Governors in Council of the other Presidencies, in all " points relating to the civil or military administration of

" those Presidencies ;" and these Governments are " bound " to obey the orders and instructions of the Governor " General in Council, *in all cases whatsoever*. There are now no limitations to the Supreme Government's power of interference, either in respect of doubts of the subject-matter on which its orders are to be given, or as regards any supposed contradictory orders from the Court of Directors, or from any other authority.

The result, therefore, of this constitution of the Supreme Government is—that, as regards the Presidency of Bengal, it governs the affairs of that quarter of India without any other restriction or control than such as are supplied by the direct provisions of the Statutes which lay down general rules for its measures and course of administration, or which are supplied by the express orders of the Court of Directors, delivered as from themselves, or as communicated from the Board of Control. But, as regards the subordinate Presidencies, the Supreme Government of India may either allow of their exercising the functions delegated to them, without interference, or it may prescribe general rules and principles according to which those functions are to be exercised, or it may expressly and specifically direct, or reject, or annul, any particular measures—in which latter case the members of the subordinate Governments become, in truth, nothing more than the agents or *Ministers* through whom the governing authority acts.

SECTION VII.

The same subject continued: History and nature of the Legislative powers of the Supreme Government.

The second peculiar power of the Supreme Government of India is that of *Legislation*. It may appear expedient to trace a little more at large than has been hitherto done the origin and progress of this power of Legislation in the local authorities of India, which is now confined solely to that of the Governor General of India in Council.

All powers of enacting laws or regulations were at first limited, as we have seen, to the *Company* itself—that is to the *Directors* or Governors of the Company, who had the entire government of its affairs. The first Charter of Elizabeth, dated in 1600, having reference merely to the formation of a trading Company, and not to a political colony dependent on the British Crown, authorized no other course of legislation than that which might be necessary for the good conduct of all the members and servants of this new trading corporation—and the rules and regulations they were empowered to enact, with a view to that object, were limited to the imposition of moderate fine and imprisonment, as penalties for the breach of such regulations. This Charter gave no power to *try*, or to erect Courts for the trial of, such breaches.

When colonies had been actually established in various parts of India, the Charters of Charles 2d, and of James 2d, in the years 1661, 1683, and 1686, gave general jurisdiction to administer justice according to the *laws of England*, and to erect Courts for that purpose. Accordingly

these Courts were empowered to judge of the breaches of the Company's rules and regulations, and to impose the punishment affixed for such breaches, as well as to try all other civil or criminal suits. But no *express* extension of the power of *legislating* for the people of the newly acquired settlements was conferred on the Company, and still less upon either of the local Governments of India; although there is every reason to believe that far greater powers of law-making, as well as of law-administering, were in reality exercised under these Charters to the Company, than either they or the laws of England in any way sanctioned.

Upon the surrendering all the previous Charters, and uniting with the new formed Company started in 1698, all the rights, powers, and privileges, of the United Company (and among them, of course, that of legislating) came to be altogether regulated and defined by the provisions of the Charter of that date, and those of the Statutes giving effect to such Charter. The powers of legislation, by these provisions, was expressly limited to the *Company itself*—and extended no farther than to the regulating the conduct of their servants and others engaged in carrying on their trading affairs, and to the imposing fine and imprisonment for breach of such regulations—which were not to be repugnant to the laws of England.

These were the only powers of legislation ever granted to the Company—save such as were subsequently delegated to it acting through the local Governments in India. But the acquisition of the extensive territories in Bengal and in the neighbouring districts necessarily led to the formation of some regular scheme for the government of those territories, which should also comprise some authority in the *local* government of enacting laws. This power was accordingly conferred by the first great regulating Act for the Government of India, passed in the year 1773.

It is observable, however, that, although the territorial possessions attained by the Company at this period in India, and reduced under the direct administration of their local governments, formed in reality a populous Empire composed of several ancient kingdoms ; and, although the whole civil and military government of all the states was confided to the supreme and subordinate Governments which had been established—yet the power of legislation confided to the local authorities was confined to the narrowest limits. It was a power confined to the Bengal Government only, and extended no farther than to " the *settlement* at Fort William and other " *factories* and places *subordinate* thereto." It follows that all those *other* territories, which, by conquest or treaty became annexed to the British dominions, and were subjected to the administration of the local Government of that Presidency, to which each portion of these newly acquired territories was attached, were required to be governed according to the *existing* laws of that scheme of power, which had theretofore prevailed. Neither the Company itself, nor either of its local Governments, had authority to enact any *new* laws or any *new* course of government. For it is a principle of the constitutional law of England that, when a new country is added to the dominions of the Crown, the people of that country are to be governed according to their old laws, *until they are changed* by the supreme authority of the state—and that all English subjects who come to reside within this new country are to be governed by their own laws, as far as they are applicable to their circumstances in that country.

Confined as this legislative power of the Supreme Government was to the local limits of the *settlement* of Fort William, and of the *factories* and *places subordinate* to that settlement, it was also narrowly restricted in point of extent. It reached no farther than to the making rules,

ordinances, and regulations for the *good order* and civil government of this settlement and its subordinate factories, the breach of which were to be punished by *fines* or *forfeitures*. They were to be "just and reasonable," and "not repugnant to the laws of England;" and they were not to be valid or of any force, unless or until they were consented to and recorded by the Supreme Court of Judicature by the same Statute erected at Calcutta: and provisions were made whereby all parties might have the opportunity of being heard before that Court, and afterwards by appeal from the decision of that Court, in objection to any such laws which should be proposed. As the force of such laws operated only by the course of *punishment*, they were limited to such as were of a *penal* nature, and for the repression of *public offences*—and could not affect any private rights, or the course of justice as regarded property and claims between man and man through *civil suits*. And, as the amount of punishment which could be awarded was to consist only of *fine* or *forfeiture*, these laws could only have reference to such offences against "the good order" of society as were of a petty or trivial description. In short, the power was merely that of better preserving the public peace and good behaviour by the enactment of such *Police Regulations* as either the English law had not provided, or which (if existing) could not well be made applicable in this country. Accordingly, when an increased and more unlimited authority was conferred on the local Governments of making "Regulations" for the general administrations of justice in the provinces throughout India, these laws, which were thus enacted for the better preservation of good order at the immediate seats of government, came to be termed "rules, ordinances, and regulations," by way of distinguishing them from those laws of a more general efficacy, which were passed for the Government of the *provinces* and were termed "Regulations:" and these "rules, ordinances, and regulations"

are now more commonly known by the term of "Police Regulations."

It may appear extraordinary that, considering the condition of the various nations over which the full powers of Government were now to be exercised in the name of the Company, no greater authority for legislation was entrusted by the Statute of 1773, to the local authorities than such as have been explained. The English subjects, indeed, were few; and those were all of them in the immediate service of the Company. But still, even with regard to them, it would be found impossible to apply all the laws under which they had been governed, and enjoyed their rights in England, to their altered position in India—and it has always, in fact, proved a hopeless task to ascertain which of the laws of England did strictly apply to them, and what were clearly inapplicable to them in the circumstances under which they were placed. But, with respect to the Natives—a large class of whom were made by this Statute subject to the laws of England generally—and the rest of whom had been for ages before governed at the mere despotic will of their rulers, and amongst whom the settled rules of justice were few, and the method of administering the law almost discretionary—it would seem that the power of declaring what laws did not apply, and what should, and what should be the course of administering justice, as well as the power of providing new regulations according as the altered, and still changing, condition and circumstances of the people might suggest, was essentially requisite; and that the authority of Government could never be complete, nor operate effectually to the public benefit without it. Even the slender power of passing Police regulations of a certain minor quality proved to be reduced to an inferior degree than what was intended, in consequence of the indefinite and obscure terms of the language in which the authority was granted. For the requisition of the previous "consent

and *approbation*" of the Supreme Court, gave to that tribunal a power of rejecting laws on account of any supposed *inexpediency*—although the members of the Court, not being concerned in the *passing* of the laws, or being made acquainted with the *grounds* of them, were obviously incompetent to form a true judgment of their expediency. Moreover, no accurate decision could even become to, as to what parts of Bengal, other than the seat of Government itself, were intended by the terms "factories and places subordinate to that settlement"—and, consequently, the power of legislation exercised under *this act* has always been confined to the immediate Presidency itself. And, lastly, it became a continual contest and difficulty to discern what of these proposed "rules, ordinances, and regulations" were "repugnant to the laws of England," and what were consistent with such laws. Rules and principles were, indeed, from time to time laid down *by the Courts, as disputes* and appeal arose, by which this repugnancy or otherwise was to be judged—but no *act of the legislature* ever settled such rules and principles. It more than once happened that while one Court rejected a proposed laws, for being as "repugnant to the law of England" as "light was to darkness"—(which was an expression used by a judge in rejecting a regulation restricting the liberty of the press) another Court approved of and recorded the self-same laws, as in no manner contradicting either the letter or principles of the English law.

Nevertheless under this legislative power of the local Governments, and this only, were British subjects—and also all Natives while resident *within the limits of the several immediate Presidencies,* or seats of government—ruled until the late Charter act of 1833. The *subordinate* Presidencies of Madras and Bombay, indeed, possessed no legislative power whatever, to be exercised over *British subjects*, and others *resident at those Presidencies*, until the

year 1807—when precisely the same power was conferred on those Presidencies, in precisely the same terms, for passing "rules, ordinances, and regulations for the good order and "civil government of the *Towns* of Madras and Bombay, "and the factories and places subordinate thereto."

But, as regards the Native people resident out of the immediate Presidencies, or, as it is phrased, *in the Mofussil*, the necessity of a more enlarged power of legislation soon began to be felt. In the progress of the eight years, from the passing of the first regulating Act for the local Government of India in 1773 until the year 1781, a continued series of disputes between the Supreme Court of Judicature first established in the former year, and the Government's Provincial Courts, in respect of the legality or otherwise of the judgments by the latter Courts, put an end to all regularity and all safety in the administration of justice. The Parliament of England at once perceived the nature of the remedy to be applied; and, while it restricted within appropriate bounds the extent of jurisdiction to be exercised by the Supreme Court, and particularly exempted all judicial acts of the Mofussil Courts from its interference, it conferred on the local Government of Bengal a power of legislation for the provinces of that settlement, which, in effect, comprised every subject-matter of laws. In the year 1781, the Governor General of Bengal was authorized to enact "Regulations for the Provincial Courts "and Councils," which were to be "of force and authority "to direct the said Provincial Courts"—subject to revision by the executive Government of England. The *extent* of this legislative power, showing it to be in truth a *general* authority, appears sufficiently from a subsequent Statute passed in the year 1797; which—after noticing that regulations had used to be passed by the Governor General in Council "for the better administration of justice within "the provinces," whereby the Natives of India had been

"made acquainted with the privileges and immunities granted to them by the British Government"—proceeds to provide, that all such regulations "affecting the *rights, per-* "*sons*, or *property* of the Natives or others who are amenable "to the Provincial Courts should be registered, and form- "ed into a regular code, and that the grounds of each "regulation should be prefixed to it." It was not, however, till the year 1799, that the Government of Madras was enabled to pass laws "for the Provincial Courts and Coun- "cils;" nor until the year 1807, that similar authority was conferred on the Government of Bombay—in which last year both those subordinate governments were likewise empowered, as before noticed, to pass "rules, ordinances, "and regulations" (subject to being registered in the Supreme Court) for the "good order and civil government" of the immediate Presidencies.

General as this legislative authority was assumed to be by the respective Governments of India, there were two subjects of legislation on which doubts from time to time arose as to their being comprehended within it—namely, the right to make laws for the government of Native *soldiers,* and for their trial by *Courts-Martial,* and the right of making laws for *taxation* of the people of India. It may have been argued, that the power of making laws, with a view to the administration of justice, had reference to the *ordinary* course of justice as between all classes of the people equally—and not to any *special* course for a peculiar class, such as soldiers, who were to be governed in a great degree by arbitrary discretion, whose first duty was undisputing obedience, and whose conduct was to be pronounced upon by the judgment of military persons, judging without the forms of the ordinary Courts. And, with respect to *taxation*, it may have been conceived that, for a government (without some express constitutional authority—existing from old custom, or from a direct allowance

of the highest legislative power of the state) —to take at its own arbitrary will any portion to itself of the property of the people, would be rather an overthrow and subversion of law and justice, than an enactment for the furtherance of either.

Still, the local Governments had, without scruple, been used to make regulations as well for the purpose of taxation, as for the government of their Native armies by martial law. The right of taxation was, at last, expressly conceded by the legislature of England by the Charter act of 1813. But this power—in itself sufficient, unrestrained, to constitute an absolute despotic government—was restricted, as regards the imposition of new taxes, and the increase of existing taxes, on exports, imports, and transit of goods, to passing laws with the previous consent and sanction both of the Court of Directors and the Board of Control. By another Statute, passed in 1814, all previous regulations for imposing and levying taxes were declared legal and valid. By the Charter act of 1813, the power of making regulations and articles of war for the government of the Native army, and for the trial of Native soldiers and officers is specifically delegated to the respective Governments of India—and all former regulations made with this view are confirmed as legal and operative.

Such were the legislative powers exercised by the several Governments of India until the time of passing the last Charter act of 1833. But they had been found defective and insufficient. They did not extend to the passing of laws which might affect the Supreme Courts, and their authorities, and jurisdiction—neither did they extend to the making of laws, which should have operation within the immediate Presidencies; except in matters of mere police, as has been already explained—nor could any even of these latter regulations be passed without the sanction

of the Supreme Court itself. By the last Charter act of 1833, however, an ample and more independent legislative authority is created; but, instead of being distributed among all the local Governments, it is concentrated in the Supreme Government of India, with a view, not only to the greater political strength and competency of the body enacting the laws, but to the more general uniformity in the laws themselves.

Full power, accordingly, is given to the Governor General of India in Council to make, repeal, and alter all kinds of laws and regulations for the government of India, and for the administration of justice therein; which may operate throughout all parts of British India, which may regulate all Courts of Justice, as well the Supreme Courts as all others; and none of which shall need any sanction from those Courts. The following are the restrictions and limitations imposed on the exercise of this legislative power. First, all laws made are to be subject to the sanction of the Court of Directors—which Court is subject itself to the orders of the Board of Control. Until, however, they are repealed by such authorities, they are (with the exception of some hereafter noticed) to be operative—so that laws for taxation no longer require the previous consent of the Court of Directors. Secondly, no such laws are to affect, or to be deemed to affect, the full Imperial power of the British Parliament to pass laws for India, and to repeal or alter any laws made by the local Government. Thirdly, no such laws are to be contrary or repugnant to the Charter act itself of 1833—or to any future Statutes, or to the Statutes already made for the government of *British soldiers*. Fourthly, no such laws are to affect the *Prerogatives* of the Crown (which have been enumerated and explained in the second Discourse)—or those constitutional, fundamental, laws of the whole British Empire, which require the obedience of every subject of the British Crown

to its government and laws—which obedience is termed his *allegiance*. Fifthly, no such laws are to affect or alter any of the rights or powers conferred by the Government and Crown of England on the East India Company itself—as represented by the two bodies of the Court of Directors and the Court of Proprietors. Sixthly, no such laws are to impose the punishment of *death* on any *British* subjects, without the previous sanction of the Court of Directors. And, Seventhly and lastly, no such laws are to *abolish* either of the Supreme Courts of India, though they may regulate them, and the law and course of justice to be administered by those tribunals. Such is the nature and extent of the *second peculiar power* of the Governor General of India in Council.

SECTION VIII.

The same subject continued: of other peculiar powers of the Supreme Government.

The *third peculiar power* of the Supreme Government is that of transacting all affairs, of negociating all treaties, and of making war or peace, with foreign states. Such affairs and treaties, we have seen, can only be carried on, or completed, under the *express orders* of the Supreme Government, except any sudden emergency should arise—and, the better to ensure this superintendence and control, the Act passed in the year 1784, requires that any such treaty made with a foreign state by, or through the medium of a subordinate Government, should in the body of it contain a clause making the treaty conditional on the ratification of the Supreme Government. An important and memorable restriction is imposed by the same Statute on the exercise of this power even by the Governor General himself. That Act solemnly declares that, " to pursue *schemes of conquest* and *extension* " *of dominion* in India, are measures *repugnant to the wish,* " *the honor, and policy* of the British nation." It, accordingly, prohibits the declaration of war, or the commencement of hostilities, against any people, or the guaranteeing the possessions of foreign Princes, without the express command and authority of the Court of Directors—except in those cases in which it shall appear that war has been commenced, or preparations made for war, against the British nation, or against any other nation which the local Governments have engaged to defend. And in these excepted cases the Supreme Government is directed, at the earliest opportunity, to convey all requisite information of its proceedings to the Court of Directors.

The *fourth peculiar power* of the Supreme Government is that of directing the *collection* and *application* of the *Revenues* of all India. This power is, in its nature, of a very *general* and of a *controlling* quality. A large portion of the revenues of India is specifically appropriated by Statutes—as in the paying of dividends to the Proprietors of stock, the maintenance of the forces, and the salaries of the high functionaries of the Indian Governments. Almost all the rest is required for the current and ordinary expenditure of the several Governments, according to the course provided for their administration. The occasions, therefore, for its special directions are few, compared with those in which each local Government is left to apply the financial resources of the country to the exigencies of the public service. Still, it has been thought expedient that the Supreme Government should have power, not only to lay down general rules for all extraordinary expenditure, but also upon occasion to interfere, expressly, either in prohibiting, or in directing, particular modes and amount of outlay. And this is a power that is much and often practically exercised.

The *fourth* and last *peculiar power* of the Supreme Government that appears necessary to be noticed, is that of directing the employment of all the military forces of India. This, also, under ordinary circumstances, is rather a controlling than a directory power. But it is obviously requisite that, as emergencies arise, the supreme local power of the state should have the active direction, as well as the general superintendence, of its armies.

SECTION IX.

The same subject continued: of the powers exercised by the Subordinate Governments.

The last subject of this discourse is the consideration of the *functions and powers* of the *Subordinate Governments* of Madras, Bombay, and Agra; including also such of those of the Presidency of Bengal as are not obviously merged with the peculiar powers of the Supreme Government itself.

And, first, their *legislative functions* are now confined to the mere *preparation* of *drafts* or projects of regulations, which are to be submitted to the Supreme Government, together with their reasons for proposing them; and upon which the Supreme Government is required to form and communicate its resolutions.

Secondly, the subordinate Governments have the appointment to all offices held in the respective Presidencies: among which is the office of a Justice of the peace, whose authority is exercised, not in the name of the local Government, but in the name of the Queen herself.

But, it is to be observed, that the Presidency of Agra has no distinct establishment of civil or of military servants, but that those appointed to the Presidency of Bengal may hold, as before, offices in either of those two Presidencies. All these principal offices in the state (with the exception of that of a justice of the peace)—both civil and military—are at present filled by those who are nominated to the service of the Company in India by the Court of Directors. But,

although the persons nominated by the Court of Directors to such service, and eventually appointed by the local Governments to such offices, have hitherto been those subjects of the British Empire termed *British* subjects, by way of distinguishing them from the *Asiatic* subjects, still there is no restriction *imposed by the law* under which India is governed, either upon the local Governments or upon the Court of Directors, against the appointment of *Natives*. This may probably be new and appear incomprehensible to many Native readers of this work. No one instance has ever been known of a member of the Native community having attained to any office which could be held by a *civil servant*, or to any step of that rank in the army which a *commissioned English officer* holds. But the last Charter act has nevertheless declared, " that *no Native* of the ter-" ritories of British India shall, *by reason only of his reli-" gion, place of birth, descent, colour*, or any of them, " be disabled from holding *any place, office, or employment*, " under the Company."

What, then, are the grounds of disqualification which prevent members of the Native community attaining the very highest stations which can be aspired to in the government or service of the Indian Empire? They are these only. That a certain quality of civil offices are by the standing rules of the Court of Directors to be filled by such only as are by them nominated to the Civil service of India as *Writers;* and by Statute it is ordained that no person shall be appointed to the Civil service, as a writer, unless he shall have been educated at Haileybury College in England. But both the rules of the Court of Directors, and the Statute requiring this course of education, are founded on this principle—that by force of such provisions those who *are sufficiently qualified* by mental cultivation, by loyalty to the British Government, and by moral integrity, are likely to be furnished for the service and preservation of the Indian

Empire. And on the same principle is the supply made by the Court of Directors of certain persons, denominated *Cadets,* out of whom only those military officers of the Native army are to be appointed who are to hold any rank from that of Ensign or Cornet upwards. While, therefore, the Court of Directors shall continue to enforce these provisions for the supply of persons to fill the higher classes of civil and military office, the local Governments, who owe obedience to the orders of this Court, must conform to them. At the same time it is unquestionable, that, *should the policy appear sound, and tending to the real prosperity of the country,* and should the just and necessary *qualifications* exist, there is nothing *in the present laws* under which India is governed, which should prevent the Court of Directors from nominating any Native to even the highest post, military or civil, in their disposal; or which should preclude that Court from nominating any Native to enter their service, generally, *as a writer,* who should by possibility have gone through the requisite course of education at Haileybury; or which should restrict that Court from nominating a Native *as a cadet.* Nay, further—there is nothing *in the law* or constitution of the Indian Governments which should preclude a Native from attaining the highest office in India, conferred by the Queen of England, such as that of a Judgeship even of the Supreme Court—so only that such Native should by his mental and moral qualities, and by his acquirements, prove himself to be *competent to the duties* of it.

That the appointment to these superior offices, both Civil and Military, should have been constantly confined to British subjects must be explained by the history of past events, and the political necessities of the country, as well as by the condition of the people. But the period seems approaching when this policy will appear no longer necessary or expedient. So long as the struggle for dominion

was maintained among rival powers, whose success depended only on the sword—so long as the British Empire in India was unsettled and unstable, its institution forming, and its scheme of administration new—so long as the whole body of the people were strangers to all systematic government founded on the supremacy of regular laws, ignorant even of its principles, unenlightened by education, and as yet unattached by feeling to the British rule—it would have been obviously premature, and indeed absurd, to have opened the attainment of influential office to the Natives so recently subjected to the British rule. It would have been at once to have abandoned the country to civil war and destruction, or to have consigned it to the grasp of some other foreign dominion. But, with the diffusion of knowledge and intellectual cultivation, has sprung up a sense of the benefits of a liberal and well regulated government, and some conviction that the prosperity of the country must depend on the permanency of its strength. The spirit of faction—and even that of social repulsion—has been gradually allayed. And, at last, public institutions are forming, not only for the general elementary education of the people at large, but for imparting literary, scientific, and professional proficiency, calculated to raise Native qualifications to a level with the resources of the country, and the capacities of the people.

It is not to be doubted, therefore, if the Native community shall be true to themselves and their real interests, that all the offices of state, and in the administration of the affairs of the country, will be gradually open to their ambition, in proportion to their proved competency to sustain them. As regards the *Military rank* held by British subjects, it will perhaps be long before the members of the higher classes of the Native community will desire to share the responsibilities of such posts. They may probably consider it most conducive to the military strength of the Empire, and most consistent with their own habits and avocations in life, that

the Native army should be composed of that quality of men who now embrace that line of public service ; and that they should be led into the dangers and enterprises of war by the same energy and skill that has for a long series of years shed a glory on the Sepoy arms. But, as regards the offices and honors of *civil life*, the ambition of the superior Natives, who are qualified and well-affected towards the British Government, naturally grows in proportion to their right to attain them. It is sufficient to say that, as well the local Governments as the Imperial Government of England, and its functionaries the Court of Directors, have recognized this right *so founded ;* the rest must depend on the character, the public spirit, and the exertions of the Native people themselves.

Thirdly, may be mentioned the very limited authority reposed in the subordinate Governments of transacting affairs, and negociating treaties, with foreign Native states, and of declaring war or making peace with them. This authority they can only exercise (as we have seen) *in cases of emergency*. All such negociations must under ordinary circumstances be conducted by the Supreme Government—and all treaties entered into by the subordinate governments in extraordinary cases must be made on the face of them subject to ratification by the superior Government. Neither can *any* local Government, Supreme or Subordinate, declare war (except in the circumstances of necessity which have been already noticed) without the express orders of the Court of Directors.

The fourth function of the subordinate Governments to be adverted to is that of the government and direction of the army belonging to each respective Presidency—which military government is administered, mainly, through the Commanders-in-Chief of each Presidency. It is to be remarked, however, that the Presidency of Agra has no separate

and distinct military establishment; and accordingly, for all military purposes, that Presidency is still considered, as before, a portion of that of Bengal. The Supreme Government has (as we have seen) the power of superseding the ordinary course of governing and directing the armies of the other Presidencies, by itself directing the application and employment of those forces, under commanders of its own appointment. This, however, is an authority never exercised except with a view to the employment of those forces in active service. But in time of peace, and in the active duties of the armies within the precincts of their own Presidencies, the subordinate Governments conduct the whole of the responsible and important duties of the Military, as they do those of the Civil Government.

Fifthly, the subordinate Governments have the ordinary management and disposition of the revenues of their respective Presidencies. In this financial administration, however, they have, first, to observe those requisitions of Statutes which have expressly regulated the general application of such revenues; and, secondly, to obey the special orders, as well of the Court of Directors as of the Supreme Government, in this department of their duties.

Sixthly, it rests with the Governments of Calcutta, Madras, and Bombay, to fix the boundaries of the Towns of those names, and extend the limits of them, as expediency may seem to require. The districts composing the *territories* of each Presidency are to be settled from time to time by the sole authority of the Court of Directors; and any order of the local Governments fixing the limits of the *Towns* of Calcutta, Madras, and Bombay, must also have the previous sanction of that Court. This authority for limiting the boundaries of the seats of these local Governments is founded on various Statutes, which enabled those Governments to make regulations for the municipal or in-

ternal police government of those Towns, and which have made the jurisdiction of the Supreme Courts co-extensive (as regards Natives) with those limits.

Such, then, are the various functions and powers entrusted to the local political authorities of India (subordinate and supreme) for the administration of the whole Civil and Military government of the British Empire established in that country. Many details, as well in respect of these powers, as in respect of the constitution and form of these Governments and the method in which they act, have in a work of this nature been necessarily omitted. They can only be learned, thoroughly, by a reference to the copious volumes of Statutes and Regulations, and to the several works explaining and commenting upon them. But, it is trusted that a general and intelligible account of the scheme of these Governments has been given, sufficient for all the ordinary objects of such information, and well calculated to form the basis of that further and more accurate acquaintance with the subject which professional or official duty may impose.

SECTION X.

Reflections on the quality of the system of Government in India; and notices of some defects.

And, now that the reader has arrived at the conclusion of this division of my labours, it may perhaps interest him to cast a glance over the course he has passed, and to pause in reflection on the quality of that knowledge he may have gained.

If he shall be induced once more to review with studious consideration those doctrines of political Government which have been summarily expounded in the first of these discourses, he may probably find his facility of comprehending them increased, and his conviction of their soundness confirmed, by the practical information derived from the ensuing pages. On the other hand, a just conception of those principles which lie at the base of all well constructed governments, will serve forcibly to impress on his understanding the origin and quality of that system of local Government under which the Empire of British India is administered.

It will be found that the Government of the British dominions, throughout all their extent, is a *consistent whole.* The *constitution* of England is the grand source of every plan of political administration established in each portion of those dominions. Over that administration the constitutional powers of the British Government hold a constant and an operative superintendence. But the English constitution is not a mere gigantic fabric, without proportion or symmetry—resting on no other foundation than its own weight, or the arbitrary will of its founders. Its parts so

correspond and fit with each other as to manifest political judgment and skill of the highest order, expanded through many generations upon its construction. It is reared upon the foundations of human nature itself in its social relations, and of human reason as applied to those relations.

Whether the English constitution be, or be not, founded on the just principles of Government—and whether there be, or be not, that correspondence between its fundamental rules, and the true ends of Government, viz. that happiness of the people, which consists in the perfect enjoyment of private rights and acquisitions, and personal security from wrong—can only be determined by ascertaining what those just principles are, and then by a thoughtful comparison between those principles and those constitutional rules. An easier, and if not a surer, perhaps a more satisfactory, judgment may be formed of the tendency of those rules, from a consideration of their effects. For undoubtedly the effects of those rules are apparent in a greater measure of political strength, prosperity, glory, and intellectual advancement than has ever befallen a nation through the history of mankind. It is a judgment formed from such sources as these which must qualify a subject of the British Crown to serve the political interests of the nation with effect—it is such a judgment, alone, which can inspire him with that loyalty to the Prince, and that permanent and rational attachment to the institutions of his country, in which true patriotism consists.

Although considerations such as these may appear to demand some stretch of thought and of reflection, yet the commonest attention to the details of the preceding discourses must suffice to shew the intimate *bond of connection* between the plan of the local Governments of India, and the general system of government under which the whole British Empire is ruled. The Supreme Government of India (as it is called) and the subordinate Govern-

ments of the Presidencies, are all constituted and regulated by *British Statutes*—and to the *British Parliament* are all Indian functionaries responsible for the just exercise of the powers entrusted to them. The *Company* is no more than a body of our own fellow subjects, *through whom* (subject to the control of a *Board* composed of another body of our fellow subjects)—acting ordinarily by their appointed Governors and officers—the administration of the Indian Governments is carried on. This Company consists, as we have seen, of an associated number of *Proprietors of India Stock*, whose chief and almost only active duty is that of electing from among themselves such qualified persons, who are to act on behalf of the whole Company, in the exercise of those authorities entrusted for a time by the Parliament of England. But it is obvious that the Parliament of England might have selected any *other* body of our fellow subjects, to wield the same powers as are reposed in the Company—subject to the same control and the same responsibilities. The legislature might have selected another body of Electors than such Proprietors—it might have selected at once, and without any election by others, a certain number of individuals, who, as *Directors*, or under any other name, should have conducted, as the highest active authority, the Civil and Military government of India; and who might have to conduct it upon a different plan, and through the medium of different Governors and officers, than is at present ordained. It is plain that the system of government for India, is only a *method* and a *medium*, through which the *Supreme* Government *of England* governs a portion of the subjects of the British Empire—in the same way as that Supreme Government, to a certain extent, regulates the course of authority exercised in certain cities and districts of England itself.

But it is not enough to observe that the Governments in

India have been modelled *on the basis* of the English constitution—has been regulated through the same legislative authority which dictates the course of Government in England—and depends altogether upon such future interference of the British legislature as may be deemed from time to time expedient. The form and frame of the Indian Governments are so planned, that the system of policy pursued by them, and all their general and important measures, are *influenced*, and *often directed*, and *always controlled* by the self-same Councils which rule the political administration of the European portion of the Empire. This results from the institution of the Board of Control, as a constant operative power in the scheme of our Indian Government. For the President of that Board, being himself by virtue of his office one of the Queen's Ministers—and the majority of the Board itself being composed of others of those Ministers—it must follow that this Board, in the actual exercise of its superior powers in the government of India, must conform both to the general views and expressed wishes of the existing Ministry of England. Thus the great national measures undertaken through and by the local Governments of *India* become—like all others pursued by the *Executive* Government of *England*—the subjects of debate and revision by the British Parliament. On the approbation, or otherwise, by that august assembly of the national measures and general course of policy under which India is ruled, the question of a continuance, or of a change, of the Queen's Ministers may depend—in the same manner (though not in an equal degree) as upon the approbation, or otherwise, by that body of the measures of the ministry in the internal administration of England itself. For instance, the late war in Affghanistan was undertaken under the influence, if not the immediate direction, of the English Ministry, and upon their responsibility. And many even of such projects as are limited to general improvements in the condition of the people

—such as a change in the system of taxation, a better digested code for the administration of justice, or a comprehensive plan of national education—can scarcely be entertained without the concurrence and support of the same Ministry.

When, therefore, it is commonly said that the territories of India are *governed by the Company*—and that the people of India live under the *Company's Government*—and when we hear of the distinction of *Native subjects,* and of *British subjects*—we ought to have a right comprehension of the meaning of these terms. The people of India live under the Company's Government, as the people of England live under the Executive Government, the body of the Queen's Ministers. The Company, as represented by the Court of Directors acting through their officers, are no more than a body of our fellow subjects appointed according to the constitutional scheme of power laid down by the supreme authority of England, to govern India in conformity with the fundamental rules established for its government. And, in like manner, the Ministers of the Queen of England are a certain body of our fellow subjects appointed according to scheme of the English constitution, for the government of the English Empire in conformity with the fundamental rules of that constitution, and in strict observance of the Statutes ordained by the supreme authority of the realm. The people of India, like the people of England, are all subjects of the *Queen,* and not of the Company. If some of the Queen's common subjects settled in India are termed *Native* subjects, and others *British* subjects, it is because *justice,* and the *equal benefit of all,* require that different laws, and a different mode of administration of those laws—with special reference to peculiar customs, religious tenets, and habits—should regulate *private* rights; and therefore *some* term for distinguishing the different classes of the Queen's subjects became necessary. But this distinction does not imply that a *different measure* of protection in the enjoyment of private

rights, and of security from personal wrong, is dealt out towards the separate classes—or even that the *law* and *constitution* of the Indian *Governments* recognize any difference in the *political* rights and privileges of the one class over the other. A consideration of the *qualifications* of the candidates for offices and honor, and a judgment to be exercised by the regular appointed authorities bearing rule over this country upon such qualifications, are the only principles of selection which are founded on *the law of the land.* The Englishman arriving in India submits himself to the selfsame rules and course of government as bind his native fellow subject—the Native, should he visit England, partakes in common with his British fellow subject every political, social, and legal right.

In contemplating the various gradations of authority—the multiplied dependencies—and the checks upon checks—which characterize the scheme of the Indian Governments, many who have little reflected on the just principles of Government, on the tendencies of all political power to abuse, and on the facilities of evading responsibility by rulers governing at a distance from the supreme organs of the State, may deem that scheme too complicated for effectual management, and that a greater simplicity would impart a proportionate increase of strength and national prosperity. But the perfection of a work is not so much to be judged of by the simplicity of its construction, as by the facility and exactness of its operations. The most stupendous of machines, the steam engine, presenting to the eye of ignorance a confused mass of combinations, and of intricate movements, directed to a multitude of diverse objects, is yet so precisely fitted in all its parts, and its motions so appropriately adjusted through all their series to the prime impelling force, that its gigantic task may be accomplished under the guidance of one man's hand. And, in like manner, the grand machine of political Government may be constructed of powers so propor-

tioned to the duties assigned, so regulated in their dependencies on each other, and so intimately connected together by a common bond of union, that the direction of its mightiest, and of its most minute, motions can receive its impulse as from one single mind. The scheme of Government for British India *works* well. The supreme influence of the British constitution is *felt* throughout the whole system. So long as the rulers and the officers engaged, according to their various gradations, in the administration of the Indian Governments proceed in the correct and ordinary discharge of their duties, there arises no intermeddling to embarrass, nor is much occasion taken to occupy vainly the public attention, or that of the supreme authorities of the State. But, should any design be conceived, or any enterprise be undertaken, affecting the national welfare—should the Collector project an improvement of the national revenues, or the judge suggest an amelioration of the laws—there is a just consideration ensured to these undertakings throughout all the organization of Government, up to that of the British Parliament itself. It is seldom that such beneficial labors have failed in securing for their authors public honors, and more conspicuous duties. On the other hand negligence, malpractices, and public wrongs can hardly escape notice, retribution, and redress. The public voice is instantly lifted up against them. The scrutiny of a connected gradation of responsible authorities is called forth in judgment upon them. And these are the surest testimonies of a good and efficient system of government—that the national energies have room to expand, while oppression stands rebuked before the frown of authority.

But it is not the object of these discourses to glorify the system of Government for British India; but rather to enable the reader *to form an intelligent judgment* upon it. It may not be, therefore, altogether unbefitting such design to point at even its defects, when they appear obvious.

I shall close this discourse by noticing two that seem to be such.

1st.—Having regard to those *just principles* of Government, which it was the object of the first of these discourses in some measure to set forth, it will be remarked as a violation of those principles, that any man, or body of men, should be maintained in wealth and luxury, out of the toil and property of the people, as public and national objects of expenditure, who have no public duties to perform, or who are unable or unwilling to perform them adequately. But the Government of British India—compelled originally by the force of circumstances which still have their influence—fosters in no small degree this violation of just political principles.

I wish not to speak particularly here of that support afforded to various Native powers, by which the dominion of certain families is upheld over the people, without any interference being conceded on behalf of the interests of the people themselves against the misgovernment of their rulers. This characteristic of the British policy—prompted solely by a regard to the interests of England—may be disastrous enough to those Native states who suffer under it. By removing all *check* upon misgovernment through the intervention of the people themselves, the ruler is encouraged in abusing his power for his own private objects. His sense of the *dependence*, both of his own authority, and of his people's prosperity, on the interests and *will of a more powerful nation*, deadens within him all hope of raising his country to the level of a rivalry (which might be thought dangerous)—and all desire to govern well at the good pleasure of another power, and at the risk of its disapprobation. The people, in the mean while, submit and crouch down under the utmost severity of oppression—for they *cannot* effect a change by a revolution in *their own* Government; nor can they overthrow the treaties by which

they are rejected from becoming subjects to another Government. These treaties are not made with the nation on their public behalf; they are rather made with their ruler on his private behalf. But this is a topic of more concern to other states than to our own.

But the British Government sustains *within its own territories* numerous sovereigns, who are such only *in name*—and who, being neither subjects nor rulers, are bereft indeed, through the vigilance exercised over all their actions, of all power to *do mischief*—but at the same time are incapacitated through such control from *doing good*—and are doomed to lead a life of indolence and unmeaning pageantry, which, if not a burden to themselves, is at least an almost intolerable burden to their country. These are dignitaries who, sprung from ancestors *once* the *real* rulers over the country, are now left to be supported by the common toil and resources of the people, although *the objects* for which such contributions were made have long since ceased. If, indeed, these personages, upon losing all real authority as monarchs, had surrendered also the rank and pretensions of royalty, and had been content to become *dignified subjects*, in possession of ample means to maintain the highest position in society—it had been well for their own true interests, and well for those of their people. Neither would the public welfare have been affected by the apportionment of an amount of the public property sufficient for such objects. But, then, all that vain expenditure wasted upon thrones and courtiers, where there is no Government—and upon magistrates and functionaries who have no duties—might be spared for more rational purposes. Those who held their property, and their rank in society, upon the same terms of being responsible to the opinions of society and to the laws for the propriety and usefulness of their lives, in the same manner as all other subjects under a regular Government, would at least be independent of all that *other* and *far more enslav-*

ing control to which, in the *unreal* capacity of *sovereigns*, they are placed in subjection. There would then be some probability that their fortunes might be expended upon objects in which the rest of the public might have an interest as well as themselves, and which would be productive of benefit in advancing the arts and general industry. It might be expected that a contrary course of mere unmeaning waste and extravagance would be persisted in only so long as neither sense nor self-interest had any influence.

As it is, the common resources and means of the people are exhausted by a constant drain productive of no common or public advantage whatever. A sort of double government is maintained, one for the public purposes of the state, and another for empty show, and the enforced sloth of a royal court without subjects. Vain pageantry and idle amusement become of necessity the only occupation of such a court. For he that enjoys the rank of a monarch, is at the same time deprived of all power of interference in the business of the state—and, claiming to be above the law, and under no responsibility for his conduct, he is not allowed the same freedom of action, or even the same liberty of managing his own means, as is conceded to the ordinary subjects of Government who are under the restraint of the law. It must be plain that it would be the same thing if the people of a country were to tax their labour, and contribute their wealth, to fill up the sea, as to bestow it in nourishing the pomp and wastefulness of such as can render no services to the public, nor even share in their common interests. It is to be observed that it is not a large amount of property thus surrendered *once for all*—ample to support its possessor in all the affluence and dignity which is consistent with the highest station of a subject—and granted in consideration of power formerly held and duties formerly performed. It is the unceasing and certain expenditure of an enormous portion of the *public revenues* of the state for sustaining the false splen-

dour of a royal establishment. No nation can make any prosperous progress under such a load. Those resources which might be devoted to public works, to extending the means of communication, to the encouragement of the arts, to fertilizing the soil, and to the spread of education, are almost all swallowed up.

But this is the result of public treaties—of treaties made with the former rulers of the land—not, indeed, made for the public benefit of their people, but made for the private benefit of themselves. But the faith of public treaties must ever be observed: and, so long as the people can endure the injustice of them, and those with whom such treaties have been made shall deem it for their interest also that such endurance shall continue, the faith of such treaties will be observed. The evil of them is, nevertheless, a truth—and a truth which should be known. For the time may come when the real advantage of *all parties* concerned may combine with their common desire for their modification.

2d. The other defect in the system of Government for British India, which I would notice, is the want of any plan of *political representation*.

It will be remembered that an endeavour was made in the first of these discourses to establish, as one essential principle of just government, that *the People should have a share in its administration.* That share was shown to consist, partly in the means afforded to the bulk of the people of attaining to the offices and honors of the state, and partly in the means afforded them of influencing and co-operating in the actual measures and proceedings of the supreme authority itself. The exercise of this last species of express share in the administration of the Government, it was shewn, could only arise out of some well organized system of *representation* through election. And, in the

second of these discourses, an illustration of such a system was attempted by explaining that of the British constitution.

Upon the nature of that share in the administration of the Government which the people of India possess or may attain to, and which consists in the access afforded to all classes, according to their qualifications, to the honors and offices of the state, I have perhaps already observed sufficiently in this present discourse. But we look in vain throughout the system of government for India for any trace of that share which the people of India can only exercise through some plan of political representation by the election of Representatives. It remains to offer some remarks on the resulting disadvantages.

They may be gathered by the reflecting inquirer from that portion of the first of these discourses to which the reader's attention has just been directed. A full and complete system of representation, such as has been there pourtrayed, and such as our fellow subjects in England enjoy under its constitution, cannot be reasonably or beneficially advocated for India. *Such* a system would not be compatible with the *present condition* of the people, nor with the necessary *security and strength of the Government.* Its great distance, moreover, from the seat of Empire, and the place of Parliamentary assembling, presents difficulties in the details of any arrangement, not easy to be overcome. But these considerations may not appear sufficient for abandoning all efforts at introducing some practical *approach* to a better constitution of the Indian Governments. So long as the whole body of the Native community of India are without representatives in the supreme, or even in the subordinate, councils of the nation—so long are they without adequate means of exposing the mischiefs of any measures of misgovernment, or of suggesting those

which may be most conducive to the national prosperity. It is only from the *people themselves* that rulers can faithfully be taught the good and evil effects of their policy before it is too late. While the people do but grieve and silently submit, public and common disasters become the only monitors. It is doing little to give free liberty of printing, and invite the general attention to the quality and tendency of laws before they are passed. *A public* cannot be thus created for any practically useful purpose. The people require a common bond of union; some sufficient organ through whom their sentiments may be made known, and their interests be vindicated. Such are political representatives, having constant communion with those who appoint them. It would be their *especial task* to watch on behalf of those whom they represent—it would be their *express duty* to protect them against unjust or erroneous measures—and it would become their *peculiar glory* to advance the prosperity of that country whose destinies are confided to their care. It is only by some means of political representation that the common interests of the people of both these portions of the English Empire can be identified, and their union as fellow subjects be permanently fixed. These means are at present wanting to the people of India; but it is no vain expectation that they will before long be supplied.

DISCOURSE VI.

On Jurisprudence: or the Principles of Administrative Justice.

OF the quality of the Virtue of Justice; and of the quality of the Science of Administrative Justice. Of the nature and object of human laws for the administration of Justice. Of the origin and nature of Property. Of the transfer and succession of Property. Of the security of the Person. That the laws on which Administrative Justice is founded should be clear and certain. In what manner laws should specify and define rights. Of the Civil Code, for the restoration of rights, and the redress of wrongs. Of the Criminal Code for the Punishment of wrongs. That revenge is not a just principle or object of laws for the punishment of Crime. Of what is the legitimate object of human Punishment. Of the Code of judicial procedure: its nature and objects. Of the evils arising from a defective method of judicial procedure. That the laws of a country ought to depend on certain general principles; and be arranged according to some system—the knowledge of which forms a Science. Of the quality of the English system of law. Of the causes of litigation independently of the quality of laws. Of the expediency of reducing the laws of a Country into a systematic Code.

DISCOURSE VI.

On Jurisprudence: or the principles of Administrative Justice.

SECTION I.

Of the quality of Justice as a Virtue, and of the quality of the Science of Administrative Justice.

WHAT is *Justice?* What does that *term* imply in the English language? What are the ideas and meanings called into our mind by the word? What are the terms employed in the various languages of the earth to express a notion comprehending so much signification among men of cultivated understanding and virtue?

These are speculations of weight and interest to all elevated minds. They concern, and they more or less in truth occupy, the thoughts of every rational being. The simplest savage has a sense of what has contradicted, or of what has accorded with, some principle or idea of *justice,* or *fairness,* towards himself or his neighbour. He confines his notion of justice to the few circumstances attending, or giving rise to, the personal pain, or the personal privation, or the personal pleasure, he is capable of or exposed to. He probably, has no *general* term in use by which he can communicate that notion, apart from the actual thing suffered or enjoyed. But the civilized man,—a member of human society in its most exalted state,—the man of meditation and refinement,—

casting his reflections over the vast variety of human actions and passions in the innumerable relations of civilized life, seeks for some general term or expression by which he can characterise that quality which is *common to an infinite multitude* of the acts and feelings of mankind, and which in his mind he considers to be the quality of *justice.*

So soon does the necessity of this classifying term arise, as the relations of social life and of Government are enlarged, that a nation hardly deserves the name, nor can be considered as emerged from barbarism, whose language possesses no *special word* to denote some *general idea* of justice, apart from the term denoting any specific act itself which may be considered just. And, in proportion as a nation extends the various relations of social life, and has advanced in intellectual cultivation, will the significance of the term *justice* be extended, and comprehend a larger variety of applications.

In its general signification among the best cultivated and most intelligent of mankind, the term *justice* includes many more applications than are appropriate to the immediate object of this discourse. It may be said, indeed, to include every *duty* we owe in social life to every class and quality of our fellow creatures.

For if justice consists in conceding to every man what God or our conscience declares to be his *due,* it is a virtue which requires of us neither to grasp at, nor to withhold, nor even to entertain designs against, his property—it requires that we should lend our help to our fellow creatures in that same proportion as we feel we may fairly look for it from others—it requires that we should respect the very feelings of others, so that we should inflict no mental distress for the sake of our own gratification—it requires that we should protect and advance those who by nature, or by the

circumstances of life, are made dependent on us—and, to accomplish these our *duties*, it requires of us such strict regard to *truth*, as that no paltry fears or interests should induce a deviation from it. Estimated according to such a measure of its signification, the idea or notion of *justice* is that of the first, or rather the queen, of virtues ; for it governs and employs all others.

And that *truth* is the very stay and strength of Justice is plain from this—that those who are willing to do every duty by their neighbours can never give effect to their virtues under ignorance or delusion ; and those who are base enough to seek the injury of their neighbours will scarce avow their feelings or intentions, but endeavour to disguise them by every species of falsehood. For, if all the bonds by which society is held together would be burst asunder, if men should altogether disregard the rules of Justice, it is equally certain that such rules could not be regarded without a true knowledge of the actions and feelings to which those rules were to be applied. And thus, also, as we abhor the oppressor, who in the insolence of power openly tramples on the rights of others, so do we despise and punish those who violate those rights through fraud or falsehood. The honesty of the merchant is, that he is *true and just in all his dealings*—the honor of man with man is that he *holds sacred his word;* that " he " sweareth to his neighbour and disappointeth him not, " though it were to his own hindrance"—the honor of a nation is the observance of *national faith.* Out of these principles of truth arises Justice—and upon Justice is founded as well the individual welfare of every man as member of society, as the prosperity of a nation. We honor the man of truth, because he scorns private and unjust advantage, and because he is above even the sensation of fear. And although in singular instances it often happens that fraud or falsehood promotes a temporary advantage (which base men

are usually tempted to trust will fall to themselves) yet it generally happens otherwise ; and it is absolutely certain that, *in the main*, the real interests of the *whole body* of the people, which ought to be the common cause, suffer. Experience, therefore, has assuredly shewn that national civilization and prosperity advances in proportion to the love of truth and justice.

But I must avoid wandering into discussion rather belonging to the moralist than to the expounder of the principles of human laws and rules of right, which are more properly the subjects of my present discourse, and to which these observations are but introductory.

Of justice, therefore, in its highest and most general meaning—or of that *natural sense* of what is due to each man in his station, which inspires the disposition of a virtuous man—or of that *habit of mind* which leads him voluntarily to render to each what is due—and how this *sense and habit* of justice tends to human happiness—I am not about to treat. Neither shall I examine into those principles of justice which by common consent are, or ought to be, acknowledged between *independent nations ;* who, having no power to prescribe rules to each other, refer themselves only to that *natural and rational sense* of right and wrong which suggests voluntarily duties. But there are particular acts of justice which are enforced, and particular acts of wrong which are prohibited, by express regulations of human origin, to which we give the name of *laws*. These laws *settle* and *declare* what are rights and what are wrongs—and the observance of them depends, not on the opinions or inclinations of those who live under them, but on the power of the magistrates appointed to enforce them. There are many things which nature itself, or the revealed will of God, has taught us should be done, or should be forborne, and whereby the human race may best attain true happiness in life, which

things are, nevertheless, left to the dictation of our consciences, or of our feeling, or of our religious faith. But other matters for the better advancement of the peace and interests of mankind, and for the very preservation of the bonds of society, have been necessarily made the subjects of imperative rules, and could not have been left to the erring opinions or frail dispositions of mankind. In the application of these rules to human actions consists that particular quality of justice which may be termed *administrative* justice.

These rules, or *laws*, must be various in different nations, according to the circumstances of each. But all are, or ought to be, governed by certain common principles which are the *laws of laws*. There are definite purposes and objects of *all* laws having in view a true course of administrative justice—and in ascertaining what these objects are, and what are the *essential qualities* of just laws, as tending to effect such objects, consists the science of *Jurisprudence.*

SECTION II.

Of the nature and object of human laws for the Administration of Justice.

It would be vain to expect that such a disquisition as I propose to engage in can be made attractive to the general reader, curious only for amusement. The doctrines and propositions to be submitted involve many considerations, and much reasoning ; and are not of a nature to be comprehended without some mental effort. The reader should be warned, therefore, that, unless he brings to his assistance a thoughtful reflection upon the passages he is about to peruse, his attention will be unprofitably wasted. For it is not to be denied that the science of jurisprudence must be classed among those whose province it is to enrich the understanding with fruitful and important truths, rather than to entertain the imagination with pleasing fancies.

Since the *happiness of* man *as a member of Civil Society*, or of an united community, is equally the final end and object as well of all *law* as of all *Government*—and since that happiness consists in the perfect enjoyment of private rights of property and personal security from wrong—it must be obvious that the proper function of all human laws for the administration of justice must be to prescribe *certain rules for the enjoyment of property, and certain rules for the personal conduct*, by the observance of which, those private rights and personal security are best attained. Laws, therefore, can never be properly employed, as some writers have incorrectly suggested, in matters which are *indifferent* : for personal security and private rights can

never be matters of indifference. Much good writing has been vainly expended in discussing whether *all* human laws are binding on the *conscience;* or whether every man may not be at liberty to obey, or not, *some sort* of laws, provided he is willing to undergo, or risk, the punishment affixed to disobedience. But all just and expedient laws whatever—whether existing by nature in our minds, or revealed to us by God himself, or taking their origin purely from human device—are more or less binding on our consciences; because they all have more or less tendency to the same object; namely, to promote hnman happiness. If once assumed to be just and expedient, they must also be assumed to be conducive to the end of administrative justice, which is the happiness of man in civil society; and, consequently, they cannot fairly give rise to any question as to their being indifferent, and of no moral obligation. Thus, if a law shall prescribe that all boats used for particular purpose shall be painted with letters in a particular form, it would be a vain distinction to say that this law springs merely out of human opinion, and is not a law by nature. It is a law expressly made for the purpose of better protecting the persons or the property of those using the boats—and it is as much a conscientious *duty*, though in an inferior degree, to obey such a law, as another made for denouncing theft. Neither is any individual member of the Community authorized to judge and decide for himself whether any particular law is just and expedient, and therefore to obey it, or not, according to the dictates of that private judgment. For to exercise and act on such *private* judgment, is to disobey the fundamental laws of *Government* and *Society*, which require the surrender of a man's private will and judgment to general rule and order—and which fundamental laws are by nature and necessity; since society and Government are necessary to human happiness. Every man, therefore, is bound by conscience to submit his own opinion to that of the Government under which he lives,

so long it is an acknowledged subsisting Government—otherwise there could be neither right nor wrong, nor any fixed notion of justice. But, as to when and how Governments themselves are to be amended or established, that is not a subject of the present discourse.

Still, no human laws can bind us which *contradict* any law of nature. This, however, is not because human laws, merely as such, are not obligatory on our consciences—but because it being impossible to obey *both*, we must observe which is *Superior*, and bend to that law which by contradicting repudiates, and as the superior authority nullifies, the other. And we can have no doubt that the law of nature *is* the superior law—for the human intellect continually errs, but nature never. If, therefore, any human law shall prescribe the destruction of children by their own parents, or a cruel burning of innocent and defenceless persons by those on whose protection alone necessity has thrown them, we may be sure that such a law is neither a law of God nor of nature—for it is contradicted and repudiated by the natural feeling of mankind. The superior law is that of nature, universal and eternal in our hearts, and it forbids obedience to the human law which would outrage the natural law.

SECTION III.

Of the origin and nature of Property.

When we speak of private *rights*, and of *property*, and of *personal security*, the protection of which is the object of laws, it is fit that we should have a clear understanding of what is meant by such terms. What is *property?* How come men to any *right* to the exclusive enjoyment of it? and what is that *personal security* to which all men have a claim?

Whether we consider mankind in that original state of nature from which many savage nations have not even yet emerged—or whether we consider man in the most advanced stage of civil society—we shall find, upon reflection, that rights to property must depend on *labour*, which is the true origin of all wealth. The savage who roams the jungle in search of food has by his labour in capturing his prey acquired a property in it, which cannot be violated by another, who has not labored for it at all, without a violation also of our natural sense of justice. The savage settling in his hut, and fencing in and cultivating some portion of the unoccupied earth originally common to all, by that labour creates the fruits of it, and gains a natural right to the enjoyment of it. The manufacturer who produces some new thing out of raw materials, or who exchanges his own products for other commodities (or for money which is the current symbol and procurer of all commodities) comes by the valuable thing he thus creates, or obtains in exchange, through his personal labour, and thus establishes a claim to it which none else can have. The merchant who buys

for little, and sells for more, obtains the surplus through his labour. The lawyer, the physician, the painter, the musician, the dancer, although they produce nothing tangible, yet, in so far as they either usefully contribute by their exertions to the attainment of those commodities, which are obtained by labour, or to what is agreeable to the senses or to the minds of mankind, they accomplish something which is desired, and which but for them would not exist at all. The return made to them by commodities or money, is that return which has been created by other's labour, and is given in exchange for what they have created by their own labour. And it can signify nothing whether food, or raiment, or any other tangible commodity be the production, or whether the service of the lawyer, or physician, be the contribution, for which the other commodity or money is given in exchange—for if food is necessary, so is health, and if raiment be necessary, so is a knowledge of the law and a successful advocacy of claims. It would be too much, indeed, to say that a particular delicacy in food, or a peculiar finery of apparel, is more rationally desirable, than the harmony of the musician, or even than the gestures of the skilful dancer. Thus we see that *desirableness* is the incentive and valuation of labour, and labour, as it is the true origin, so is it the only foundation for right or just claim to property. It is a right which co-exists with the very nature of our being; for a man must have as plain and just a right to that which is solely and exclusively produced by his own labour, as he can have to the use of his own faculties—both rights being subject only to be abridged or modified by such rules of Government and Society, without which rules of some kind or other no rights whatever could subsist.

Hence we must also see how vain must be every pretension to property, or in other words to those commodities

created by labour, by those who have neither contributed their own exertions or services towards the creation of it, nor have derived it from those who have earned it by their's. For no man can naturally, or according to that sense of justice implanted by nature in every man's conscience, claim to make his fellow-man labour for him without requital. If one man could demand the labour of another, without any return or remuneration, he might with equal justice demand the labour of one hundred or of one million. Neither Society, nor Government, nor the well-being of mankind under Government or in Society, require this. *Every* man *desires*, and would endeavour, if nothing prevented him, to get as much of the labour (on which property depends) of other men as he can ; and there is no limit to human desires. But it is the business of human laws to prevent men from helping themselves at their own mere will to what they desire, and to limit the right of every man according to what he can himself do or supply in exchange for his possessions, or to what has theretofore been done or supplied by others in exchange for those possessions. The King on his throne, as has been said before, has his duties to perform in exchange for all he enjoys, in the same manner as the labourer in the field must give his services or his toil for the remuneration he receives.

SECTION IV.

Of the transfer of and succession to Property.

But property, and the right to it, having once originated by labour, must be sustained, and kept in existence: it must not be abandoned again to some chance occupier, or to the strife of the strongest. Of the various possessions which men even by their own labour gain they can themselves consume or enjoy but a small portion. What is to be done with the surplus? It may be suggested that it cannot justly be allowed to be utterly wasted or destroyed —and, therefore, what a man can neither consume or enjoy ought to return again in common. But this is not consonant to justice—for if property should so return in common, no other man could gain a natural right to it through his labour in producing that property; and Society, which is naturally necessary for man's happiness, would be broken up, if such property become continually the subject of strife. Neither is any thing wasted or destroyed, any more from becoming a surplus beyond what the owner can himself enjoy or consume. Somebody will soon or late be sure to possess or consume it. It is to be inquired how the transfer to others shall be made, so as best to keep Society well together, and conduce to the general mass of human enjoyment. And, upon such an enquiry, the consideration immediately arises that nature itself has placed others in necessary and immediate dependence on almost all men; and, in particular, he is impelled to provide for his own family. Besides this, every man derives a pleasure in bestowing portions of his property, at least upon his children, and usually upon his friends—and as this is a pleasure he

has earned by his labour, he has a natural right to the enjoyment which is had in exchange for that which his labour created. It is clear, therefore, that the right to property carries with it the free right of *disposal of it* to others.

And this right is not put an end to even by a man's death. In most civilized nations, a possessor of property has the right by will to bequeath his property entirely at his own discretion—in others, various modifications and limits are imposed on this discretion. But, in all countries, some provision is made for sustaining a property in some one, after the right of the last possessor has ceased by death. The *mode* in which property after the possessor's death shall descend, or be distributed, is indeed purely a matter for human opinion. In the more barbarous and oppressed nations, we find human custom or express law has given the property to the King or Chief—thus, not only destroying the main incentives to industry, but unjustly increasing the share of enjoyments falling to the Prince, and also his power by the command of those means. In other countries, the provision for *children* or relatives is *enforced* to a greater or less extent. But, as society itself could not subsist while property was left to be continually and universally the source of violent strife, the *right* to it, when once property has been created, must necessarily be sustained by providing a never-failing object for its transfer.

Such is *property*, and such the origin and nature of *rights* to it—let us next examine what is meant by *personal security*, and of rights to that.

SECTION V.

Of the security of the Person.

This security of person can consist of nothing else than a man's freedom from the infliction of death, or of bodily or mental pain, by the acts of others. And this freedom from wilful injury by another to life, or to the feelings, or to the person, is what the inherent sense of every man informs him he has a claim to in justice, or, in other words, a *right* to, unless by some determination of the rules of that society or Government under which he lives (which society and Government, with its rules of action, are also of natural necessity to mankind) he shall have forfeited such right of exemption from personal injury. And it is plain there could not exist any natural right to property, or even to subsistence, without the natural right of full security of person against the unauthorized violence of others. For every man must have a free liberty, as well from bodily pain as from personal imprisonment or restraint, in order for the application of his labour, on which property depends. So, also, though in a minor degree, there must exist a natural right to a man's deserved reputation and good character; for, not only is much misery of mind endured by the consciousness of hatred excited against us, but all our faculties are impaired, and our means and opportunities of industry frustrated, by the aversion of others which slander may have raised.

SECTION VI.

That the Laws on which Administrative Justice is founded should be certain and clear.

These rights, then, are the objects, and the sole objects, of administrative justice—for if the rights of *private property*, and those of *personal security* are fully protected, every good that man can derive from civil Government and Laws is attained. The business, therefore, of laws being the protection of these rights, it remains to enquire what are the essential qualities of those laws which best tend to accomplish that end.

It may be thought a proposition too plain and self evident to require discussion, that the laws for the administration of justice should be *certain* and *clear*. And yet, plain as the proposition is, the bulk of mankind are apt to misunderstand or misinterpret it. Among barbarous and unenlightened nations there are very few rules of right, *founded on principle*, by which the administration of justice is guided; although it often happens that their bodies of law are made up of a large accumulation of details, applicable to, and probably suggested by particular cases and circumstances, but dependent on no general principles. Decisions or rules of this nature, formed for the most part from the suggestions of the *natural sense* of various-minded judges bearing on individual instances, usually abound in inconsistencies. As each case must have its own peculiar characteristics, there is no good reason for excluding the authority of the same natural sense in deciding new controversies, which sense alone had dictated the rule of right on previous occasions. Uncivilized nations, therefore, whose rules of law

are so imperfect, easily submit to a customary course of deviation from them: they can conceive no fairer mode, nor any cheaper and more ready, of ascertaining rights than the appeal to the upright judgment of a good man; and their minds are slow to apprehend the advantage, or even the possibility, of any system of fixed rules which shall comprise every quality of rights, and the most expedient method of securing them.

But, further, it is very common to find, among the most enlightened and best governed nations, those who undervalue the *rules* of law according to which justice is administered; making continual appeals to *reason and common sense;* as though all forms and requisitions of such rules should be set aside when the judge's natural uninstructed sense could suggest a different view of the case, or a different course of arriving at that view; and as though all such forms and requisitions were but so many whims and fancies invented for the purpose of shackling the efforts of a free understanding. Such notions, however prevalent, are in truth too shallow to deserve refutation. We may assuredly declare that the universal experience of mankind throughout all countries, independently of what our reflective reason would explain, has shewn that a people's prosperity must entirely depend on the certainty and merit of their rules for the administration of justice between man and man. Those who are versed in such laws, who watch and see their operation, who best can observe how peace and security are preserved thereby, can shew forth the grounds and reasonableness of the general rules by which they are guided. But such as prefer the impressions of what they call plain and *common sense* (but by which they can only mean *their own* understanding) are impatient of the restraint of set rules, the meaning and application of which they do not comprehend—they are averse to the trouble which a studious examination of them would im-

pose—and they are mortified at every exposure of the errors which their unguided impressions betray them into. For if ignorance begets a plain boldness of decision in an arbitrary judge, it perplexes and renders helpless one who is constrained to adjudicate according to law.

In no portion of the civilized world are the rules of justice so uncertain, so obscure, and so contradictory as in India—and if justice is not worst administered there, it is owing rather to the integrity of its functionaries than to any merit of Indian law. It has been said by an Indian Judge of great experience and learning, that "there "is scarce a question of Hindoo law which may not be "*affirmed*, and *also denied*, upon the authority of some "book." It may be well therefore to pass in review some of the more obvious mischiefs arising from the want of *certain* and *clear* rules for the administration of justice.

If judgments shall be given according to the individual's *sense* of what is just—for want of any plain and sure guide in the admitted law—how could any man distinguish between what was the Judge's real sense of what was just, and what was his mere *caprice* and *feeling?* If such individual sense, or caprice, or personal feeling, was the sole origin of a judgment, who could say, that any judgment was right, or was wrong? For there would be no guide. Every man might say that his own sense was as good as that of another—every man might ascribe to his sense of right, the judgments which, in truth, were dictated by his evil passions; and there could be no check against corruption. No man could feel, nor could he in reality be, safe in his person or his property. Let any one inquire what powers the Hindoo king, or even the Hindoo Brahmin possesses, over the persons of others, and he would seek to define them in vain. The power of the king is *absolute* and *uncontrollable*—he is a powerful *divinity*—but he is

directed to act on advice, and generally through the ministration, of the Brahmins—"a divinity in the human form" his first and main duty is "to *inflict punishment* according "to the *Shasters*." How then do the Shasters direct punishment to be inflicted—by what rules and for what specific criminal acts? And how does the Brahmin contribute his advice, and execute his office? "If a blow, "attended with *much* pain, be given to human creatures "or *cattle*, the king shall inflict on the striker a punishment *as heavy* as the *presumed* suffering! "A Goldsmith who *commits fraud* the king shall order to be cut "piece meal with razors." "Robbers who break a wall, "or steal in the night, the king shall cut off their hands, "and transfix them with a stake." "If a man steal a horse "of *small account*, the magistrate shall cut off one hand "and one foot—if any *small animal*, exclusive of a cat or "weasel, the magistrate shall cut off half his foot" &c. &c. "A Brahmin is a powerful divinity, whether learned or "ignorant." "He need not complain to the king of any "injury—even by his *own power* he may *chastise* those "who injure him." "For *ill language* to a Brahmin "the Sooder must have a red hot iron style, ten fingers "long, thrust into his mouth—for *offering* a Brahmin "*instruction* hot oil must be poured into his mouth and "ears—for sitting on a Brahmin's carpet he shall be liable "to have his buttock cut off." "But a Brahmin himself "shall *neither* lose *his property*, nor be hurt in *his person*, "although he commits *all possible crimes*." "*Whatever* "*orders* the Brahmins shall issue conformably with the "Shasters, the magistrate shall execute" (Vide Laws of Menu). Let any one examine the institutes of Menu to ascertain when and how a Hindoo son becomes *incapable of inheritance*. He will read of "those distinguished by "*science* and *good conduct* being allowed to take a *greater* "share"—but, among those utterly excluded from any inheritance at all, are enumerated "lame, blind, deaf, afflict-

" ed with any incurable disease (as, amongst others, *dysen-* " *tery*)—those who have no principle of religion—those " who have *lost the use* of a limb." It is plain that such general indiscriminate language as this—to say nothing of the palpable injustice of such rules—must leave the application of such laws open to mere arbitrary discretion. What a fertile source of dispute is the capacity, or not of a Hindoo to bequeath ! What are the rights of members of undivided, and of divided families ?

Thus a vague and obscure text—together with the peculiarity and variety of irrational customs in different castes —confounds the most vital interests in uncertainty—and arbitrary constructions must supersede all regularity in judgments. In such a state of things no certainty of legal advice is attainable—and where no rights can certainly be known, there can be no end of litigation. Industry, the fountain of wealth, becomes dried up in the barrenness of insecurity of possessions. The people who do not see, or who do not heed, such evils as these must be content to live in poverty and dependence—as herds obedient to the voice of their master. What right in another to respect, and what right of his own to claim, no man can surely know—what act under what penalty to refrain from, what duty to undertake, no man can learn. " If the trumpet " give an uncertain sound, who shall prepare himself for " the battle." Those laws, therefore, are best which leave least within the breast of the judge. And a judge, to be truly such, is not one who is merely sagacious in discernment, and imbued with a sincere and upright sense of the principles of justice ; but one who is *learned* in *definite laws*. For he is the best judge who leaves the least to himself.

SECTION VII.

In what manner Laws should specify and define rights.

Laws, then, which are to be the sure test of rights, and to be the certain guide to the magistrate in the dispensation of justice, instead of his own wayward and arbitrary will, ought to *ascertain* and *specify* those rights: they ought to set forth how they are acquired, and they ought to point out under what circumstances and in what manner they finally cease.

As to what are the rights of *personal security*, they are few and plain, and have been sufficiently enumerated perhaps already. But the *rights* of *property* are so various; and subject to so many qualifications—they become so infinite in number and complicated in quality, in proportion as the industry of mankind increases and improves the sources of enjoyment—that in the highest civilized nations the currency of legislation can scarcely keep up with them. An exact definition of rights becomes continually more difficult, and a clear and ready knowledge of them requires long and laborious study.

Looking in the present inquiry no farther than to the *principles* of administrative justice, and to what should be the main and universal characteristics of human laws directed to enforce it, we must be content with laying down and establishing general positions, without following them up in detail. We may recognize, upon reflection, this position—that all rights of property must consist in the power conceded by the community of using or employing things or persons in particular modes,

so as to derive a gratification from such use or employment. A perfect definition of rights, therefore, should comprise and specify all the *various modes of using or enjoying things, and of employing persons.* Thus, a piece of land, or a house, may be used in a limited or in an unlimited manner—for a limited or an unlimited time—upon certain conditions or without any conditions. And so also of other and movable articles of property, a man may have the absolute uncontrolled power of using and of disposing of it, or various limitations and conditions may be annexed. And, again, the services of persons may belong to others, either for the purpose of creating or increasing tangible property, or of contributing to the gratification of the senses or intellectual faculties. Accordingly, our enumeration of powers over things, and over persons, for these objects should not only specify the *modes* of using and employing them, but also the *extent* of those powers, or in other words *rights.* The definition of these rights will further ascertain the *beginnings* or grounds of them—such as by *labour,* or by *contact, bequest, succession,* or the declared will of the legislature. And, lastly, it will proceed to specify those facts and circumstances which put *an end* to such rights. Such cessation of right, independently of those circumstances above noticed as expressly transferring such previous rights to others, may arise, not only of necessity, as by death, but by forfeiture, or by some inexpediency in the further existence of such rights—as for instance rights over slaves—or by abandonment, or by dedication to public objects, and in various other ways. Laws must be proportionably defective as they fail to enumerate and define such various rights of property—for it must be vain to attempt the protection of rights, the existence and nature of which are altogether unknown.

SECTION VIII.

Of the Civil Code—for the restoration of rights, and the redress of Injuries.

If the various rights of personal security, and of property with all its subdivisions and qualifications, have been specified and ascertained, it becomes the next essential characteristic by which a good system of laws is to be estimated, that it provides efficient means for securing every member of the social community against the violation of those rights. This can be done by two courses only: 1st, By supplying a restoration of such rights, or adequate redress when restoration is impossible; and, secondly, by the infliction of so much pain and suffering on the party who shall invade them as may suffice generally to deter the bulk of mankind from such wrong.

Hence arises a two fold division of laws for the administration of justice. 1st, That body of laws which expounds the nature of rights, and a course of procedure for recompensing the violation of those rights—2ndly, That class of laws which define what acts shall be offences or *crimes*, and which laws also prescribe a course of procedure with the view of *punishment*. There is no apt term recognized in the English language to distinguish the first class of laws; but it is generally termed the *Civil Code*, and we may designate it as the *Code of rights;* the second division is with more meaning termed the *Criminal, or penal Code*—or the *Code of crime.*

This two fold division of laws is founded on reason and principle; as will appear if we pass in review the distin-

guishing qualities of each body of laws. The *code of rights* having in view the definition of the rights of property in persons or things—that is, the modes by which services derivable from persons or things shall be enjoyed—how the rights shall be acquired, and how they shall cease—will necessarily be various in different countries. They will be altogether regulated according to the situation, the climate, the quality of the Government and other peculiar extrinsic circumstances of those different countries. There is no *standard general* rule of right for each such law, applicable under all circumstances. Whether a law shall declare that all sons shall inherit equally, or whether it shall declare that they shall succeed in certain proportions—whether a law shall allow the taking of interest at 5, or at 12 per cent, or at any indefinite amount—may be questions of mere social policy ; and either law may be best, according to the condition of the people. Neither is there any *natural* and universally acknowledged *guilt* in deviations from the greater portion of such laws, except in so far that all express laws under settled Governments ought for that reason, to carry with them our conscientious obedience. Such laws must also necessarily vary according to the national wealth, and the stage of advancement in civilization of the people—and they also necessarily change in the same countries according to the progress of wealth and advancement. In proportion to such increase must be the number of cases which combine new and unprecedented circumstances, unforeseen and unprovided for in express detail, and which either must be shewn to class under the general rule and reason of laws already existing, or else become the subject of new laws, or of original decision according to some natural sense of justice. Contests arising out of such new cases of doubtful rights imply no *guilt*—each contending party may assert his pretensions in good faith—they may be set up through mere misapprehensions of facts, or of law, and such misapprehension may be unavoidable. More-

over there are some omissions of duty, and some deviations from known rules of law, which, however wilful or unjustifiable, yet, being confined in their effects to the interests of one or a few individuals, may be sufficiently restrained or rectified by a course of law which may nullify such injurious effects, or afford a full restoration of the rights invaded. The distinguishing characteristics of the Civil Code, or *code of rights*, therefore, are that it merely ascertains rights, and supplies remedies for the invasion of them, through *restoration* or *redress* to the injured party. As this object can only be accomplished by means of *Property*, to property alone are its operations confined when called into action. Its aim is not the infliction of any pain or suffering; except, indeed, such become the means, and the only means, by which its real aim that of restoration or redress can be attained. Its method of procedure for the investigation of facts, the declaration of the law, the award of recompence, and the enforcement of its judgments, admits of many differences, according to the nature of the right to be ascertained, and that of the injury to be redressed: but all these differences are guided and governed by the characteristic objects in view, namely, *redress* through the *regulation* or *transfer* of *property*. As the questions which arise in civil litigation are very various, and often difficult, its course of procedure for the ascertainment of facts, for the exposition of the law, and for the enforcing of the judgments is the more cautious and complicated. Since no guilt is assumed on either side, or at least beyond the power of redress, its judicial process is *equal* between the opposing parties; and as *property* alone is the subject matter contested for, the immunity and liberty of the *person* is the more respected.

SECTION IX.

Of the Criminal Code for the punishment of Injuries.

The code of crime, or *criminal code,* although it has the same general view as the code of rights—namely, the protection of property and personal security—has reference to an entirely distinct quality of wrongs against property and person, and prescribes a different course for the prevention of such wrongs. It selects a series of acts which contradict the rules of justice between man and man, and the well-being of the social community, which acts it denounces, not as *deviations* to be *rectified,* but as *offences,* or *crimes,* to be *retributed* by public hatred and *personal suffering.* Acts of this quality are, or ought to be, such only as our *natural conscience* suggests to us as unjust. Laws against *crime,* therefore, are very similar in all countries—all depending on one common principle, and guided by the common sentiments of human nature. The guilt of theft, or murder, depends not on any questions of social policy. Nature itself has stamped the odious and injurious characteristics of such acts. Little controversy can arise respecting the quality of direct, lawless, criminal invasions of rights, compared with the infinite diversity of questions arising out of the contests and doubts attending the acquisition and enjoyment of property. Long and black as the catalogue of human delinquencies may be, they are but few which come within the scope of the Criminal Code. *Crimes* are distinguished as those acts which effect injury through *fraud,* or through *terror,* or through actual *violence*—which thereby create *a general apprehension* of insecurity—and which inflict wrongs for the most part *beyond the means of redress:* and to such acts may be added some which are

criminal only because the perpetration of them excites a *natural hatred* and *abhorrence.* The remedy aimed at is, not the *rectification* of that which is wrong, or merely the *recompence* to be made to the individual injured—which is generally impossible, and always inadequate to the total amount of mischief—but the future protection of the *community generally*, through the personal punishment of the Criminal.

Such being the subject-matter, and such the immediate object of the *Criminal Code*, as distinguishable from those of the *Code of Rights*, we may expect that its course of procedure will also exhibit some corresponding differences. As *every* course of legal procedure, whether as it regards civil rights or criminal acts, is similarly concerned in the investigation of facts, the exposition of the law, and the enforcing of judgments pronounced—some writers have been induced to designate this as a third and separate branch of jurisprudence, under the term of *The Code of Procedure*, and such a threefold division may not be an inconvenient or an incorrect method of classifying the whole subject-matter of human laws. But, as each of the former divisions of jurisprudence, the Code of rights and the Code of Crime, effect their final objects in the protection of property and personal security through *different* modes of judicial proceeding, and *different* resulting operations, those distinctions ought not to be lost sight of, so as to confound the judicial procedure for the investigation and protection of *civil rights* with that for the investigation and punishment of *crimes*.

When a crime has been committed, it is *Society* that suffers, and not merely an individual—it is the further security of society that is to be protected by the punishment of the criminal, and not the party injured to be personally redressed. There is no *personal* interest at stake, there-

fore, which may bias any individual in putting the law into force. Every man in pursuit of justice against the offender has, or ought, and is supposed to have, a *public object* only in view—and every member of society is more or less concerned in lending his aid. As a sense of public duty is to be assumed as actuating the party accusing, and some presumption of guilt is fixed upon a party actually charged by any testimony of facts, the accuser and the culprit do not submit the case for judicial enquiry and judgment with equal relative rights and equal relative responsibilities, in the same manner as litigants do when contesting civil rights, each with a view to his own private interest. The quality of the acts charged, the nature of the personal suffering to be undergone by the guilty party, and the presumption of the existing guilt as soon as a specific accusation is credibly made, dictate also a stricter course for ensuring the personal appearance to answer the charge made, in cases where the accused can by his *person* only, and not by his *property*, atone for his crime. And, lastly, in proportion to the severe, and sometimes irremediable, consequences of punishment on the guilty, ought to be the various safeguards supplied for the ascertainment of truth and the defence of the innocent.

SECTION X.

That revenge is not a just principle or object of laws against Crime.

But, before I proceed further to comment on that branch of administrative justice which respects the objects and method of *Judicial Procedure*, some further consideration appears due to the governing principles of *crime* and *punishment*.

The appetite for *revenge* is a passion so naturally allied to the sense of injury, that it is difficult for the ordinary and unreflecting masses of mankind to conceive that the gratification of it is not as conformable to morality as it is urgent upon our feelings. Our anger is not voluntary : its mastery over the reason is proverbial : for, although the occasions are rare (and usually arising out of habitual indulgence) when sudden wrath utterly overthrows all the powers of the mind, yet it is altogether impossible to prevent such excitement having in some degree its bias on our reason, and too often on our actions. Even our *resentment*—which we may distinguish as *thoughtful anger*—will, in spite of self-control, still rankle in our breasts, so long as the author of our wrongs triumphs in careless impunity. Nay, it is a feeling that has so much of dignity and manliness in it, as to carry a sort of commendation among the bulk of mankind.

There is no doubt, therefore, that the propensity to revenge has been implanted in our bosoms by the God of nature for wise—and, if wise, we must say for beneficent—purposes. It is, in truth, that natural *impulse* by which man-

kind are led to protect themselves against injury through the infliction of suffering upon the wrong-doer, and whereby the softer feelings of sympathy with our fellow-creatures is, with a view to the general well-being of all, stifled for the time. For revenge is a sort of *wild justice*—and its growth in the mind is in proportion to its want of rational culture. The nearer that a savage people approach a state of nature, the more they are governed by their passions. By vengeance they not only gratify a raging appetite, but they also preserve their social existence, which could no longer continue if universal wrong could not by some such course be prevented. And even afterwards, as civilization, and government, and law gradually gather and keep together a people, converting wandering tribes into settled nations, we find that they are slow to perceive the true object of human punishments, and slow to resign the gratifications of revenge. In proportion to the civilization of a people, does vengeance cease to be applauded; and, afterwards, to be tolerated—and thus we may reckon among the tests of the ignorance and barbarity of a nation the cruelty of its punishments.

Allowing, then, that we may regard the desire of revenge as a natural feeling, which would not exist at all but for purposes consonant to the well-being of mankind, we must regard it also as an *impulse*, which, like those of all other passions, will drive us into misery and evil, unless guided by our reason—and, in that guidance, we must entirely respect *the end* which the creator of man must have intended. That end was not any gratification to be derived from human suffering. So far from it, this gratification is but of short duration, and generally gives rise to compunction or sorrow, rather than to any lasting complacency. And this happens because men are usually *inordinate* in their desire of what tends to their own gratification—and there is always

something repulsive in the reflecting contemplation of the suffering of another which has produced no benefit to any body. It would, indeed, be hard to say what measure of vengeance would be sufficient to satiate resentment in any given case ; and it would be equally difficult to say to what degree the desire of revenge may be satiated without causing some resulting regret. Such a gratification cannot, therefore, be good for its own sake, or as a source of virtuous happiness. The impulse which excites us towards it must have *another* aim and object—the gratification is but as the means to an end, and not the end itself. On the contrary, our more reflecting sentiments teach us sympathy, fellow-feeling, and the forgiveness of injuries.

But, if neither *reason*, nor a true sense of *morality*, will sanction the gratification of revenge—still less is it the province of *human laws*, which in their best sense are the perfection of reason, to administer to such an appetite. The office of the law is either to weed out altogether that wild justice which derives its growth from the passions of savage nature, or else to change its rudeness through culture. It looks only to the happiness of man in society, and not to the gratifications of his solitary feelings, still less of his unsocial appetites. Bodily suffering it contemplates as a pure evil *in itself;* it regards the infliction of it as justifiable only in preventing worse evils. If the infliction of personal punishment becomes *necessary* for the maintenance of *personal security* and of *private property*, which are the resulting objects of all human laws, the extent of such punishment is limited by the bounds of such necessity. Every amount of pain administered *beyond* the existing necessity for such, the only just, objects of human laws is a mere sacrifice to malignity—a creation of evil to answer no useful purpose—an unmixed mischief. This is a maxim which ought never to be lost sight of by the wise legislator or the enlightened citizen. Cruel laws will not be carried into

effect by a humane and intelligent people—and, therefore, become nugatory, and for that reason an encouragement to crime. But if inordinate and vindictive punishments *are* resolutely inflicted, it either betokens discontent among the people, or serves to brutalize their dispositions, and retard their social prosperity.

SECTION XI.

The legitimate object of human Punishment.

The only legitimate way in which punishment can operate in protection of rights, is by the terror of example. It, accordingly, becomes the object of a just Government to ascertain, as far as its limited capacity will allow, the *amount* of punishment which will *suffice* to inspire so much terror as may induce a voluntary abstinence from crime. This amount of punishment can never, in truth, be absolutely ascertained—for there is no severity of it, not even certain death by extreme tortures, which will assuredly deter all mankind from the commission of some sort of crime. History records many instances of the perpetration of crime, through vengeance, or excited passions, which the malefactor has dared, in spite of the expectation of the manifest and immediate retribution of a cruel death. And it is also the subject of continual experience, that men will sometimes purchase a temporary gratification at the certain cost of greater suffering than they can inflict, or than such gratification can, even in their own opinion, compensate for. But, still, in all *ordinary* cases the *promptness* and *certainty* of any the smallest amount of suffering or privation to be undergone beyond the gratification or gain acquired by the commission of the crime, would be sufficient to quell all temptation to it. It is plain that there could scarcely be a theft, if the plunderer should be *sure* that he would *immediately* have to surrender his booty, and something more. And so it may be said of most other crimes, when an immediate retribution should be made to surpass in the slightest degree the gratification. A *greater* amount of punishment

becomes necessary only for these two reasons—First, because it is impossible to make the retribution either certain or immediate ; Secondly, because there are human passions and appetites so strong, as that in some cases neither the certainty nor the immediateness of a much larger share of suffering than that inflicted, or than may overbalance the temporary gratification of such passions, will deter men from rushing on the guilt. The effect of mere delay and uncertainty of any retributive evil in deadening its influence on the apprehension is as remarkable as it is obvious to our reflection. Thus, the uncertain period, and the fancied remoteness, of death itself, the most appalling and the most assured of all evils, renders us all but indifferent to its terrors. And it must be quite unnecessary to point out how commonly the human appetites impel us unscrupulously to acts, which our own judgment clearly shews to be, eventually, productive of a real disadvantage.

It follows from these considerations that, in the endeavour (for it can be no more) of a Government to affix a sufficient amount of punishment to deter from the commission of crime, it must necessarily adopt, so far as it is possible, a scale of retribution very considerably beyond that of the injury inflicted, or the gratification enjoyed from the perpetration of the crime. It must endeavour to compensate for the influence of the delay and uncertainty of the retribution in deadening our sense of apprehension—and it must strive to counteract by severity the bias of the passions over the judgment and conscience of mankind. At the same time it is to be observed that, in proportion to the promptness and certainty of punishment, should be its leniency—and that, since all *unnecessary* pain is an evil, a wise legislature will aim at *perfection in the rules* for preventing and detecting crime, and ensuring penal retribution with a view to increasing the dread of criminality, rather than trust to any vindictive cruelty in punishment. For severity can never be just-

ly or effectually made a *substitute* for that certainty and regularity which may be attainable by a good Criminal Code well administered. Either humanity shudders and revolts at the disproportioned punishment—or, else, all just feeling must be uprooted from the heart through ignorance and barbarity. For the same reason simple death ought to be the utmost punishment inflicted for the greatest crime. Because, although death through accumulated tortures may be the more dreadful to endure, yet the increased terror at crime thereby occasioned will by no means compensate for the outrage on all proper feelings of humanity, or for the evil effects of the insensibility of a people to such horrors. Moreover, it is reasonably doubted whether criminals, who disregard the penalty of death, will be induced to refrain through the apprehension of additional tortures.

Of the various prevalent *modes* of punishment it would be an useless labour to rehearse a list, unless with a view to discuss the appropriate application, or otherwise, of each, or else with a view to gather some general rules in the adaptation of punishments to crimes. Both the one and the other of such objects would lead me far beyond the scope of this discourse—and, indeed, so much controversy has been raised, and still exists, on these points that I could advance but few positions as indisputably settled on sound argument. It is clear that the nature of the punishment ought not always to depend on the *quality of the crime*, but must sometimes be regulated by the *quality of the criminal.* Of punishments, some are purely corporal, others operate chiefly on the mind and feelings. The lash, or heavy labour, may be all that is felt in the infliction of such suffering on the low-born, ignorant, and hardened pauper—exposure to public scorn, privation of all present property, banishment from his country, may be penalties of which he could scarce be sensible. By the man of birth, or respectable station in life, on the contrary, personal pain may be in itself compara-

tively despised; but the disgrace and infamy which may attend the infliction of it may be more intolerable than death itself: and, to him, exposure merely, deprivation of rank or fortune, or transportation from his home, must necessarily be a punishment of the severest nature. Again, the assault or the slander committed by the low-bred common labourer against his equal neighbour may be of little account—that of the rich man, or the nobleman, against his equal may testify the most injurious outrage or villany. These contrasts, according to persons and circumstances, might be copiously exemplified, and they serve to shew that there can be but few *general rules* in the adoption or rejection of particular modes of punishment. One, however, appears to gain ground in the consideration of most civilized nations—which is, the avoiding, as far as possible, the infliction of corporal pain, and the resort to such punishments as may rather enforce and embitter reflection. And this principle in punishment seems well founded, inasmuch as while the penalty which the criminal is made to endure may be, in itself, a sufficient warning and example, it tends at the same time to his reformation, and thereby to relieve him, eventually, in some degree from that load of public hatred and personal disgrace which aggravates his suffering beyond what is due, and renders him an useless incumbrance on society.

SECTION XII.

Of the Code of Judicial Procedure, and its nature and objects.

I have thus endeavoured to point out what are the *rights* which are the objects of administrative justice—to shew that they should be ascertained by clear laws—and to explain the quality and the principles of that body of laws directed to expounding rights and affording redress for the invasion of them, and of that body of laws directed to the punishment of a criminal violation of rights. It now becomes expedient to add a few further observations on the quality and principles of that branch of jurisprudence which is concerned in setting forth the *method of judicial procedure*, which I have considered as forming part of each of the above twofold division of human laws, but which has been sometimes treated of separately as a third division, under the term of *the code of procedure.*

The objects of *judicial procedure* are—the investigation of alleged facts or charges—the exposition of the rules of law as applicable to ascertained facts—and the enforcement of the judgments pronounced with a view to redress or punishment. For these purposes regular Courts of law should be established, with distinct and well ascertained powers and jurisdiction; and the judges, who preside over them for the administration of justice according to the settled rules of law, should be such as by a long course of education and experience in the laws of the land have proved their competency to such duty. Their decisions, should be openly and publicly pronounced; and so long as they stand, and subject to such correction and rectification by superior au-

thority as by express law may have been provided, they should be uncontrollable. That their decisions may be given according to the dictates of their true knowledge and of their conscience, judges of every quality should be made, as far as possible, independent of all bias from interest and from fear, in respect of any consequences of their judgments. But by this it is not to be understood that judges should be exempt from all superior control or personal responsibility. The ignorant judge should be displaced, the unjust judge should be punished. But their independence should be that of the mere *discretionary* power of any party to favor or to injure them. With reason, therefore, does a just system of law and of Government throw around all judicial functionaries so large a share of protection in the performance of their duties, that nothing short of deliberate and full proofs, before some well constituted tribunal of enquiry, of guilt or incompetency in such performance should affect their interests, their reputations, or their security. And thus much it may be sufficient to observe upon the principles which should prevail in the establishment of Courts, and the quality of the judicial authority—for it is not intended here to discuss the expedient constitutions of various Courts, their relative extent of jurisdiction, or the respective qualifications of their presiding magistrates or ministerial officers.

But the objects of judicial procedure are very far from being attained by the mere establishment of regular Courts, and the appointment of able, learned, and conscientious judges to administer justice therein according to law. That they may be enabled to ascertain facts—to apply the rules of law to such state of facts—and efficiently to carry their judgments into execution—they require to be guided by *certain settled forms and rules,* such as long experience, the continued exercise of sagacity, and a consideration of the circumstances of the people of the country, have suggested as most conducive to the accomplishment of these ends.

For it is to be considered that, with a view to the just ascertainment of facts, or the subject-matter in controversy, and the exposition of the law applicable to the case, it is necessary, first, to provide that the charge or complaint made, as well as the point or charge denied, should be precise, specific, and clear; so that the judge may perceive exactly and plainly *what is the matter of fact* to be investigated, or *what the matter of disputed law* to be adjudicated upon: and, secondly, it is requisite to provide for the due admission of *proper proofs*. So, also, as regards the efficient execution of judgments, when pronounced, all evasions must be prevented, and all excesses provided against. All these purposes require some regulated course of stating facts—some regulated means of compelling disputant parties to answer or admit each other's statements—some method by which inquiry into disputed facts should be prosecuted—some process by which the testimony of witnesses or of documents should be adducible—some rules as to what testimony or evidence is relevant or receivable, and for sifting and examining the quality of that which is to be received—some order in the delivery, of judgments, and also in obtaining a rectification of such as may have been erroneous—and, finally, certain specific modes of enforcing on the person, or upon the property, of delinquent parties, the work of restoration, recompense, or punishment.

A slight reflection on this complicated subject will teach us that to frame a body of rules best calculated to effect these objects in the practical administration of justice among a populous and civilized nation, must be a task of great labour, of much sagacity, and also of experienced knowledge. Such a system of judicial procedure has rather to be built up in the progress of ages, than to be devised at once from the mere force of invention. If parties complaining of wrongs, or demanding rights or imputing crimes, are not to be left entirely to their own discretion as regards the modes of bringing

forward their claims or charges—lest the ignorant or the weak-minded should inadequately represent the subject-matter of inquiry—lest the statements made should be obscure, or comprise long and vain details—lest the opposing party may not be able to perceive distinctly what he has to answer—lest a full and fair opportunity be not given him to make his answer—then is it requisite that some forms and methods should be devised, by compelling an adherence to which these defects and evils will be best avoided. So, if parties are to be heard in denial or on explanation, and to be condemned in default of either—they must have due times and seasons allowed for such purposes, and such a course must be prescribed for their meeting the claims or charges made, as that they may have full opportunity of stating all that they desire to state which is relevant to the matter, and none of evading or deviating from the questions to be considered of. So, again, if he who is to judge between the parties is not to adopt that course of inquiry and hearing which he in his discretion may in each individual case choose to direct—then must it be settled by what course a question of *disputed law* may best be discussed and considered of, or a question of *disputed fact* best be tried and examined, allowing to each party the means of adducing all available testimony on points *of fact*, and all applicable arguments upon points *of law*. If *all* representations by witnesses, or through the medium of writings and documents, are not to be admissible and heard as evidence upon matters of fact, and upon equal terms as regards its weight, of whatsoever quality it may be, and from whatever quarter it may chance to come—then must some general rules be laid down as to incompetency in some parties to give testimony, whether from the infamy of their characters, or their defective understanding, or their bias through some serious interest at stake in the question to be decided; and also as to the inadmissibility of some qualities of evidence, from not being relevant to the matter

previously put in dispute, or from being merely the statement of absent parties, and not within the actual knowledge of the witness, or from other such causes. For, it is to be borne in mind, that the legitimate object of all rules in the respect of evidence is to ensure, as far as possible, the true knowledge of facts. The question for consideration is, whether the admission of *all sorts* of evidence or testimony—that which a party interested may give—that which a witness may *relate* as said by others who are absent—that which an absent party may write—that which a husband or wife may say for or against each other—that which an infamous or perjured person may state, and so on—may not as often lead to falsehood, and the disguise or concealment, as to the establishment, of truth. If there is any justice in such apprehension, it must follow that sound reason, much insight into the moral qualities of human nature, and an extensive acquaintance with the business of mankind in civil life, must be exercised in the framing a body of rules for that department of judicial procedure which regulates the reception, or the rejection, and the appreciation of evidence. Again, in the order of delivering judgments obvious topics for consideration arise; such as the expedient *publicity*, the assignment of reasons, the notice to parties concerned in order to their presence, and the mode of solemnly recording the decisions. So also, if any means for rectification of judgments pronounced are to be allowed—the modes, and the terms of appeal, the quality of the appellate tribunal, and the limitations of the power of appeal, have to be ordained—with so much prudence as that, while, on the one hand, a check is afforded against ignorant or heedless adjudications, and a thorough deliberation on difficult points of inquiry is ensured—efficient obstacles may be supplied, on the other, to vain and vexatious litigation. Lastly, if the execution of judgments requires any safeguards against oppression, and any forces to cope with resistance or evasion—a regulated course, and prescribed

methods, have to be ascertained, whereby judgments may be made effectual according to their strict objects, and all deviations from them be restrained.

In such or similar details must every system of judicial procedure be occupied; and, so necessary a part is it of administrative justice, that the merit of the whole judicial system in every civilized country is mainly to be judged of according to the quality of this portion of it. Its importance in the laws of every country would appear from the circumstance of its preceding even the rules for ascertainment of civil rights, and for the redress and punishment of wrongs. Even while all rights, and all qualities and amount of redress and punishment, are left to the consciences or arbitrary will of those who wield the powers of Government, the *methods for hearing, trying, adjudicating, and enforcing obedience* are usually regulated with some detail, and on some principles of equity, as between man and man. In India, this is the only department of the judicial system which has been reduced into any thing like a systematic code; for he who shall examine the regulations of Government will find that the processes of the law, and the modes of procedure, occupy almost all that body of the volume which is not dedicated to the collection of revenue—and the previous prevailing laws of the land have been left but partially modified, and indeed almost untouched.

SECTION XIII.

Of the evils arising from a defective method of Judicial Procedure.

Still, it is by slow degrees that nations, as they emerge from barbarism, perceive the advantages of a detailed system of uniform rules for judicial procedure; and those who either will not, or cannot, justly reflect on the nature of its objects, not uncommonly hold a language worthy of a barbarous age. It is still made a question by some, whether *common sense* would not suggest, that every judge should receive with equal attention all complaints—should prosecute his enquiries, according as the individual circumstances of each case might suggest to his uncontrolled views —should give his judgment of the law, and extort obedience to his decision, in such manner and by such means as *his sense* of justice and expediency may dictate. I have already adverted to the importance of *clear* and *certain* rules of law for the settlement and protection of rights; and most of my observations will equally apply to this portion of such rules as are concerned in regulating details of Procedure. It seems fit, however, that I should further enforce those general observations, by a few others of more specific application in manifesting the mischiefs of a defective system of judicial administration—for it is certain that, as it is sometimes said that such plan of Government is best which is best administered, so with much more truth may it be declared that the most perfect code of civil rights, and of crime, may become the mere engine of oppression, unless the administration of it be regulated by a *clear* and *certain method of procedure.*

It must be obvious that where the judge has no guide, save his own discretion, in his course of hearing and prosecuting inquiries, or in his mode of enforcing obedience to his judgments, the course of all investigations, and administration of the settled law, must vary according to the *talents*, and also according to the *disposition*, of the judge. New, and different, and often contrariant, modes of enquiry will be adopted by each separate judge. The ignorance, or the weak understanding, of one man may betray his integrity into *errors* subversive of justice—the abilities of another may facilitate the *wilful partialities* which a malevolent or corrupt inclination may inspire. It will always be in the judge's *power* to make the details of each case before his consideration bear whatever complexion may suit his own views—but, whether those views be right or wrong, and whether the details be full, and true, and fair, must altogether depend on the mental and moral qualities of the judge. We may be sure that uncontrolled power naturally tends to corruption, and that the uninformed understanding naturally deviates into error. But where no certain prescribed rules supply a check, or impart instruction, it is manifestly vain to seek either from the uncontrolled will, or from the common ignorance, of superior authority. The arbitrary judge can scarce be blamed for pursuing the dictates even of a defective understanding, in default of any other rule of guidance; and he may defy the scrutiny which would distinguish between the wilful abandonment of what a natural sense of justice suggests, and the inability to perceive it: The controlling authority of a superior affords no security either for a sounder intellect, or a more upright disposition. When, therefore, the discretion of the judge, and not any settled rules, shall determine his course of executing his functions, it seems plain that, even under the best code of laws, prescribing what is right and prohibiting what is wrong, there is no greater certainty of the prevalence of true justice,

than there is the certainty of wisdom without learning, and of integrity without any checks upon corruption.

If it were conceded that the utmost efficiency in point of intellectual power, and the purest moral sense, should characterise the judge, yet, in the absence of any regulated system of procedure, would his ablest efforts often be thwarted, and as often be encumbered, with doubts, delays, and difficulties. When every suitor or accuser can have access to the ear of the judge in whatever manner and by whatever course his own views of his interests, his own cunning, or his own excited feelings, may prompt—no common rules existing for the equal restraint and equal instruction of all—these two results may be expected: first, that the judge must be continually exposed to unfair attempts to bias his mind; and, secondly, that his examinations will be loaded with irrelevant inquiries leading to no definite end. Having no guide as to what statements he ought to receive, and what to reject, or when and how they are to be delivered to him, or by what course they are to be made known to and answered by the opposite party, he must admit *all* representations, or else run the risk of repressing those which may be the most important. Hence arises that custom of *private petitioning*, so common among people whose laws are not administered according to any settled rules or forms. Hence all those arts and contrivances, by which the designing and dishonest seek to create a secret influence, are encouraged. The impartial, and conscientious judge will, indeed, resolve to deal openly, and may disclose to each party every act done and every allegation made. But it will then become obvious to what confusion and imperfect results such a course of indiscriminate hearing and examination would lead. As the matters alleged on each side are likely to be numerous, indistinct, and various—so must the points to be proved be as various and uncertain also. It will be impossible for either party to know which of them may be consider-

ed altogether unimportant, and often difficult to know which may be the most important to be established. New matter for enquiry may continually be advanced, which either side may require time and opportunity to answer or disprove. There being no settled rules for the reception or rejection of evidence, the parties can never know beforehand what will be admissible, and what not. Thus it will be impossible that either party can be certainly prepared at the time of trial, either as regards the nature and extent of the testimony he ought to adduce, or the quality of the witness who may be allowed to testify. Reference must be made to the judge for directions at every step—and he becomes alternately the adviser of each party, instead of the indifferent arbitrator between both. Much more might be said in exposition of the mischiefs of a mere discretionary course of administering the law, but it needs some illustration by detailed examples to make them thoroughly comprehended. To give a general notion of the nature and objects of a regulated plan of judicial procedure is all that can be aimed at in a discourse like this.

SECTION XIV.

That the laws of a country ought to depend on certain general principles, and be arranged according to some system—the knowledge of which forms a Science.

All knowledge of which the details can be reduced under certain general rules, founded on rational principles, becomes *a science*. As jurisprudence, which inculcates the *laws* of laws, or the *principles* on which all laws for the due administration of justice ought to be founded—(which principles are derived from *observation* on the nature of man in society, and on the qualities and tendencies of political Government)—must itself be a science, so, also, must a knowledge of the law or rules of justice, as established in every free and civilized nation, become a science. The construction of a body of laws, whereby the rights of property may be secured, and the person may be protected from injury, is no more than the adaptation of the principles of administrative justice to the affairs of man in society. Among a savage people, without any form of constitutional Government, among whom there exist but few rights of property, and the only personal injury to be provided against is corporal violence, the rules of justice are necessarily very scanty. Under a despotic Government, where arbitrary will decides all rights, and pronounces upon all wrongs, the laws may, also, be simple and few—for under such a Government no man can claim any thing as surely and independently his own, and every man is exposed to suffer without possibility of redress what some other may choose to inflict. But under constitutional Governments, and among a people abounding in all the commod-

ities and wealth which go to make up the resources and enjoyments of civilized life, the case is very different. Among such a people we must hear of property in land, and the various modifications of such property—of property in an infinite number and variety of goods—of descents and successions—of transfers, conveyances, and contracts—of differences in rank and condition, giving rise to distinctions in rights and privileges. Under Governments where the life and the liberty of the subject is precious, and his rights of property held sacred, no man can be deprived of either without careful and regulated inquiry, and without the fullest means afforded of defence. Hence, among free and civilized nations, the laws and rules of justice cease to be obvious to every man's plain uninstructed understanding, or to be dependent on his uncontrolled discretion : they become multiplied in proportion to the amount and variety of rights, and to their progress in freedom and wealth. The knowledge of the law necessarily becomes an object of laborious study—for the judge must decide, and he who would be an adviser and practitioner in the law must perform his task, not according to their own crude uninformed notions of what is right and wrong, but from the suggestions of a mind stored with a vast mass of distinct rules, and with an insight into the principles on which those rules are founded, and also with a capacity to apply these rules and principles to the infinite variety of circumstances, which in the dealings of mankind give occasion to contest and doubt.

It is the common complaint of the vulgar, and of such as do not weigh such considerations as these, that the administration of justice according to systematic law, is tedious, troublesome, and expensive. Such complaints do not arise among barbarous and misgoverned nations—for where there is little property, or where the greater share of it is monopolized by the ruler himself or his favorites and supporters and despotic power orders every thing, there is

little occasion for litigation, or suits, and wrangling. But these complaints prevail most where the rights of the people are most numerous and various, and where the rules for their support against violations are most cautious and precise. In other words they prevail most in proportion to the prosperity, wealth, and civilization of the people among whom they arise. But, if all these rules and forms of justice—leading as they do to harassing delays, trouble, and expence, as well in the establishment as in the defence of rights—are considered with the relation they bear to the security of property and of the person, and to the degree of freedom enjoyed by the subject under a wise and liberal Government, they will be found to constitute the necessary result, and the price which must be paid for such security and freedom, on which the prosperity and wealth of a nation must depend. The ordinary and unreflecting portion of mankind, who view with a partial eye their own interests, and their claims or wrongs when they happen to be contested or denied, are impatient at all restraints upon a speedy decision, and at all forms which stand between them and what they deem justice. But, it should be recollected, that these same forms of justice, which are to them so irksome and inexpedient in cases which in their partial view may erroneously appear to be plain and simple, are the safeguards against such as may be put forward by the crafty and dishonest, and a protection against judgments given according to no fixed rule of right, but according to mere wayward and wilful discretion. If we enquire among what nations the course of judicial decision is the most speedy, cheap, and conclusive, we shall assuredly discover it among those lawless tribes who remain nearest to the state of nature, or among those nations, in which the bulk of the people are little better than slaves. Whether in the horde of Tartar savages, amongst whom property has scarce a name, or under the

most ancient Mussulman Governments where the word of the Prince or Magistrate is the inflexible law, every matter of dispute is quickly and finally settled. The judge decides as he pleases—he is guided by no rules—and he is swayed by no responsibility. It is indifferent to him how he decides, so that he determines the case—and obedience is equally and peremptorily exacted, let the decision be what it may. To desire such a measure, and such a course, of cheap and speedy justice, is to desire such a condition of the people as can alone admit of it. It is to desire that there should be but few rights, and a small amount of property to decide about—it is to desire political slavery rather than liberty—and that right and wrong should become mere matter of chance.

SECTION XV.

Of the quality of the English system of Law.

The English nation enjoys a most eminent degree of political freedom, because its Government is settled upon just principles and constitutional rules. Its laws and rules of justice under which that freedom is preserved, under which property is secured, and the person is protected, have long ago been laid down and fixed—growing up under the watchful care of learned, able, and virtuous men throughout many ages. Under these laws the national wealth, and the national power, has increased to a height beyond that with which any Empire on the earth has hitherto been favored. Amidst the many gradations of rank and condition—amidst the infinity of rights, and modifications of rights, which these gradations and the accumulation of property, with its endless variety of uses, have given rise to—and amidst the complicated and numerous causes for controversy naturally consequent on this position of society—the law of the land has provided the certain means of assurance and redress, applicable to the peculiar circumstances of almost every case. Jurisprudence has become a science, as well as the law depending on its principles; to the study and exposition of which men of cultivated understanding devote their lives. For the learning, as well as the integrity, not only of the judges who administer the law, but of the counsellors and practitioners who advise or assist in its efficient operation, there is every security which interest, and a sense of honor, and a love of reputation can supply. It may be supposed, therefore, that among such a nation the administration of justice must be eminent-

ly exact—that able and upright judges have but to open their eyes and see—that vexatious or ignorant litigation must be vain, and therefore likely to be rare—and that wrongs should diminish in proportion to the certainty and adequacy of retribution. How happens it, then, it may be asked, that so great a number of legal Courts, with every variety and quality of jurisdiction, should be spread over the land—that lawsuits, controverted claims, and criminal punishments, should abound wherever the English law prevails—and that accusations of its uncertainty should be as common as those of its delay and expence?

That much of this accusation arises from ignorant clamour and misconception is an assertion so easily made that it will meet with little attention, unless borne out by some proof; but to exhibit decisive proofs would lead to a lengthened discussion. Considering, however, that all human institutions and regulations run into abuse, it will deserve remark how seldom occasions are taken to propose before the legislature, amendments and alterations in the settled laws, and how few are the calls for such legislative interference except with a view to the correction of those abuses from which the most perfect judicial system can never be exempt. An explanation is sometimes offered, that lawyers and judges gain by the uncertainties, defects, and abuses of the law; and therefore they will uphold them, having as a body power enough to control the united voice of the people, and the supreme legislature itself. Such an explanation implies that a large majority of these functionaries are among the most mercenary and dishonest of mankind—that their cunning and their talents are more than a match for the general sense of the nation—and that their influence in the state surpasses that of the executive powers of Government backed by the support of an oppressed people. How far this class of functionaries may merit such a character, whether of corruption or of political power in the state, may perhaps be sufficiently an-

swered by a reference to public opinion—but it is certain that from this class have sprung all those laws which have served most in fixing and preserving the free constitution of the Government, and the most important of those also which concern the due and equal administration of justice between man and man. Indeed, it would be very difficult to shew how the personal interests, any more than the reputation of those distinguished lawyers, whose opinions have influence in the state, can be advanced by the maintenance of professional abuses. A more rational and consistent explanation why the legislature is far less occupied in correcting the laws as they stand, and so much more in adding to and improving them, according as the new creations of property and the continual changes in the condition of the people suggest, may perhaps be this—that those who understand thoroughly the reasons and principles of the English laws, and their operation, seldom see occasion for essential alterations; and those who yield to their own ill-considered notions or those of others, in seeking their amendment, either find the task they undertake beyond their mental strength, or become convinced, upon calm investigation and the just reasoning of such as are most competent to judge, that their projects are mischievous, and their complaints without foundation.

It would be an undertaking not more curious than profitable to compare the operation and results of the English system of law, with those of the various systems adopted in other civilized countries—with reference, not to its effects on political freedom (which, however, is one important object of laws)—but merely with reference to those main objects of administrative justice between man and man—the security of property, and the security of the person.

As far as regards the *expence* of litigation for the recovery of rights, and for the prosecution of crimes, it may be al-

lowed that it is an evil attending the administration of English law far surpassing that which attends the course of administering justice in most other countries in the world. But the expence of litigation increases in proportion to those other characteristics in the administration of the law which tend most materially to the ends of justice. It increases in proportion to the amount and precision of those rules which ascertain rights, which protect every man in the enjoyment of them, and multiply the means of defence against unjust demands and accusations. It increases in proportion to the integrity, the learning, the competency, and the honorable station in society, of those who dedicate themselves to professional and judicial duties. When objects of this nature are the real and only causes of increased expence, they more than compensate for an evil which thus becomes of unavoidable necessity. The absence of such causes will ensure cheap judgments, but not cheap justice: and it scarce needs to be noticed what an encouragement to vexatious and vindictive litigation must be the opportunity afforded of embarking in it without personal trouble or charge. And, let it be further observed, that the cheapness of judicial decisions is not always and necessarily in proportion to the absence of such causes of expence as these I have enumerated. It is asserted by a writer on the judicial system of India that litigation in the Sudder Courts of India is, *in the result,* at least as expensive as that in the Supreme Courts. But it will hardly be said that the above noticed *causes of expence* apply in an equal degree to the system of law as administered in both those classes of Courts.

In regard, however, to the comparative prevalence of crime, and of delays and uncertainties in the administration of the law, under the English judicial system, and under that which obtains in some other countries, an inquiry has been made, the results of which deserve attention and command confidence. It has been ascertained that in

Sweden, which there is no reason to distinguish as the worst governed of European nations, or the least advanced in civilization, the convictions for *crimes*, punishable as such by all civilized Governments are, compared with those in England, as *four* to *one* at least. (Laing's Travels in Sweden, 1838.) It has been shewn by a writer on the judicial system of India, as regulated by its local Governments for administration in the provinces, that the time occupied, on the average, in obtaining a decision is at least four times as long as that expended in the average course of litigation in England; and that, whereas scarce one judgment out of thousands under the English law is appealed against, and not one in six reversed or even altered, out of those which are appealed, no less than one-half of the original decisions are overruled or amended by the Courts of Appeal, under that administered in the Indian provinces. And we may be sure that, when such is the case, almost every decision by the original Court either is appealed against, or would be so if it could.

SECTION XVI.

Of the causes of Litigation, independently of the quality of Laws.

Thus much I have thought it not impertinent to observe in proof of the misapprehension of those who inconsiderately urge peculiar defects and faults in the English judicial system, but it will be more to the purpose to advert to some of those causes of litigation which must ever prevail, not only under that system, but under the most perfect code of laws that human wisdom can construct.

Among these causes are *the human passions,* which will never cease to breed violence and fraud ; and which even repels the bulk of mankind from making voluntary compensation for injuries that cannot be denied. There are, further, the *mistakes and uncertainties, as regards facts.* Such may arise from corrupt evidence, inciting to unjust claims, or defeating those which are just—or from deficient evidence, which may induce as well the wrongful as the rightful claimant to hold by what he may happen to possess —or from erroneous evidence, which may lead the most upright to litigation under a misconception of right. To these causes must be added the long list of those springing from the *frequent necessity of seizing and distributing property by legal processes ;* as, on occasions of insolvency, or of the confliction of numerous creditors of the same party, or of resort to mortgaged property for the satisfaction of debts. And, lastly, among the principal causes of necessary litigation must be enumerated the *doubts in the application of even the plainest rules of law,* according as complicated cases, and new combinations of circumstances arise. When this

large amount of the unavoidable sources of litigation is subtracted from the whole sum of those which enter into the administration of justice under the English law, it will probably be found that but a small portion of that litigation is derived from such sources as the uncertainty, or obscurity, or defects of the law itself, or the unrighteous claims and accusations which such a state of the law is calculated to beget. It is, indeed, rather a subject of surprise that, among a swarming population enjoying so large a share of personal and political freedom—among whom the smallest aggression against the person or the property has its specific legal remedy—among whom the presumed innocence of every man is supplied by the amplest means of defence—among whom commercial transactions are of such unbounded extent, and property subdivided and qualified in a thousand ways—the various and complicated rights of every individual should be so exactly adjusted and secured, as to lead to so little litigation as does actually prevail. We must rather look for proofs of the demerit of any judicial system in the amount of erroneous and contradictory judgments, than in that of the number, duration, or expence of the causes tried.

SECTION XVII.

Of the expediency of reducing the laws of a Country to a systematic Code.

It must be allowed, notwithstanding what has been said, that the administration of justice according to the laws of England is not only encumbered, with many imperfections in details, but that the legal system itself stands in need of amendment. In the application of the existing laws to the infinite variety of new cases, and new combinations of circumstances, the decrees of the Courts necessarily multiply to a vast extent. As each of these decrees is an authority and precedent for like judgments to be pronounced in similar cases, they become so many rules of law. But, since it is seldom that two cases which give rise to controversy can be exactly alike in all their circumstances, the distinctions which exist often occasion differences of opinion, where no difference in principle really exists—and thus arise uncertainties, and even contradictions, in the very rules of law themselves. Moreover, not only these *rules of law,* but also those *express laws* which the supreme authority from time to time enacts, and which are often confined to peculiar evils, or directed to temporary objects, gradually become inapplicable to the altered times and condition of the people. The accumulation of these rules of law involved in judicial decisions upon individual cases, and of these express enactments of the legislature suggested from temporary causes, grows at length to be too vast for the grasp of the human intellect, and the necessity becomes apparent of correcting inconsistencies, and of digesting and arranging the whole heap under gene-

ral rules and principles. In England this task, however ably and skilfully fulfilled, has been left to the labour of private authors and compilers—but such a digest of the national law is the more appropriate task of the supreme legislature; not more for the sake of ensuring uniformity and completeness, than for that of fixing upon that law the stamp of *authority*. This it is to reduce the laws of the land to *a systematic code*—a work which, as it is the most laborious and the most difficult in which the powers of the mind can be engaged, so is it that which most conduces to the perfection of administrative justice, and the consequent prosperity of a people. It may be expedient, therefore, in concluding this discourse, to point out those general characteristics in the prevalent laws of a country which suggest the reduction of them into a code.

The reasons which should induce the formation of the laws of a country into a regular code, are—1st, that they have become *obscure* through antiquity, or through changes in times and the circumstances of the people—2ndly, that they are *not easy of access*; as when they are dispersed amongst various treatises, argumentative disquisitions, reports of judgments pronounced, and enactments of the legislature comprehending many unconnected subjects—3rdly, when the laws have become *bulky* and *numerous*, so as to abound in repetitions, and to comprise a multitude of rules and regulations upon the same topics without any substantial distinctions—4thly, when laws have been *ill prepared through the incompetency* of the framers, and *ill-arranged through neglect*; whereby confusion and doubts are chiefly caused, and contradictions insensibly creep in—and, lastly, when *new laws have been prematurely introduced*, before the state of a country, or the condition of a people has become adapted to the change; as when a new Government introduces its own laws into a foreign country, without due consideration of the peculiar national customs and habits.

All these reasons for a reform in national laws, with the exception of the last, do with more or less force apply to the English judicial system ; and it is a mark of the enlightened views of the present age that this should be seen and acknowledged. The extensive amendments, and consolidations of various distinct masses of the English laws, which these views have lately led to, gives an earnest of further efforts towards accomplishing the greatest and most beneficial of all human undertakings—the systematic digest of the whole body of the national law. So vast and comprehensive, a labour, requiring the united and long continued exertions of many powerful minds, may appear to surpass the strength of any single effort of Government ; and perhaps it may be wiser to await the gradual correction and digest of each distinct department, than to attempt at once an uniform arrangement of the whole body of the laws. When, however, the cautious vigilance, the copious remedies, and the ample securities, which pervade the administration of justice under the English law, are referred to as the efficient causes of its practical merit as it stands, it should be recollected that the more plentiful the materials are of a legal code, and the sounder the principles on which they depend, the more is the construction of a code facilitated, and the more perfect may it be expected to prove.

But, if most of the reasons I have above enumerated have more or less application to the state of the English law, they all of them more unquestionably bespeak the expediency of a digested arrangement of the laws which are to prevail in governing the administration of justice in India. The materials, indeed, of such a code are far more scanty, and the principles of the existing native laws must be acknowledged to be far less sound. But if the construction of a body of wise and beneficial laws for this country becomes, therefore, the more difficult, it becomes also the more necessary. The original laws of the various tribes and castes, living

under the guidance of different religious doctrines, under various forms of government, were, like the earliest and imperfect laws of all other nations, identified with their precepts of religion—and so they still remain—although the rights and conduct of men in civil society have but in few respects any natural connection with their duties towards the deity, their forms of worship, or their tenets of faith ; and, amidst the great differences in such forms and tenets, it must appear obvious that no system for the administration of justice ought to be made dependent on the casualty of any particular doctrine of religious belief. It may be reasonably surmised that, in ancient times, the distractions of political change, and the oppressions of petty rulers, as they may have retarded the advancement of the people of India in civilization, so they may have precluded the improvement of their laws : and we know that in more modern times foreign conquests, and continual internal wars, must have produced such their usual results. The ancient laws, therefore, which have thus remained in their original imperfection, have gradually become more and more loaded with obscurities, vagueness, and uncertainties, while comments, constructions, and arguments have supplied the place of express laws, sanctioned by just principles. It must be admitted that, as the English sway has extended, and its empire become consolidated, much has been attempted towards regulating the administration of justice in India ; but it must be admitted, at the same time, that the attempt has been made by those who could learn but little to the purpose from the native laws, and who brought but little learning, either in jurisprudence generally, or in the laws of their own or any other country, to bear upon their task.

It has been, perhaps, upon some such considerations as these, and certainly upon a deliberate survey of the state of the law, and the defective course of administering justice throughout the Indian empire, that the supreme legisla-

ture of England has, under the last Charter act detailing the schema for the future government of India, entrusted to a body of Commissioners the duty of collecting materials, and reporting suggestions, with the view to a digest and consolidation of the judicial system of the country. Whatever success may attend an undertaking involving great difficulty and labour, we may hail its policy as that of a beneficent Government making the prosperity of its people the rule of its measures.

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